

RESOLUTION NO. 13244-19

A RESOLUTION 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 BLUE CANON, LLC, AND THE CITY OF NEWPORT NEWS, VIRGINIA, DATED AUGUST 13, 2019, FOR GENERAL OFFICE/WAREHOUSE SPACE AT 802 BLUE CRAB ROAD, SUITE 500, IN THE CITY OF NEWPORT NEWS, VIRGINIA.

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

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 Blue Canon, LLC, and the City of Newport News, Virginia, dated August 13, 2019, for general office/warehouse space at 802 Blue Crab Road, Suite 500, in the City of Newport News, Virginia.

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

3. This resolution shall 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

Lease

THIS LEASE submitted for Tenant signature this the 13th day of August, 2019, by and between **Blue Canon, LLC** herein referred to as "Landlord"; and **City of Newport News, Virginia**, herein referred to as "Tenant".

- :WITNESSETH: -

PREMISES: Landlord does hereby lease to Tenant and Tenant does hereby rent from Landlord, the following described real property: **Suite 500** (herein referred to as "Leased Premises" or "Demised Premises") with a street address of **802 Blue Crab Road**, being part of the building or complex of buildings and appurtenances ("Building") and its Common Areas which is located in the City of Newport News; said Premises containing approximately 2,000 square feet of gross floor area as shown on Exhibit A.

USE CLAUSE: The Leased Premises shall be used only for **general office/warehouse space** and no other use without the prior consent of the Landlord.

TERM: The term of this lease shall be for **1 year** and shall commence on **November 1, 2019** ("Commencement Date") and end on **October 31, 2020** ("Termination Date"). Unless Landlord gives Tenant, or Tenant gives Landlord, written notice of an intention to terminate this Lease at least ninety (90) days before the end of the original or any renewal term of this lease, then until terminated by such notice, this Lease shall renew itself year to year, subject to all covenants, provisions and conditions herein contained. Except where the context clearly requires otherwise, the word "term", whenever used in the Lease with reference to the duration hereof, shall be construed to include any renewal term as well as the original term.

1. BASE RENT AND COMMON AREA CHARGES: Tenant agrees to pay Landlord as rent for the Premises a monthly Base Rent and Common Area Charges as follows during the initial Lease term and the first four renewal terms, if exercised:

11/1/19 - 10/31/20: One Thousand Four Hundred Seventeen and 00/100 Dollars (\$1,417.00) per month.

11/1/20 - 10/31/21: One Thousand Four Hundred Fifty Nine and 00/100 Dollars (\$1,459.00) per month.

11/1/21 - 10/31/22: One Thousand Five Hundred Three and 00/100 Dollars (\$1,503.00) per month.

11/1/22 - 10/31/23: One Thousand Five Hundred Forty Eight and 00/100 Dollars (\$1,548.00) per month.

11/1/23 - 10/31/24: One Thousand Five Hundred Ninety Four and 00/100 Dollars (\$1,594.00) per month.

Each monthly installment together with such amounts due for Additional Rent, as hereinafter defined, shall be due and payable without demand therefor being made and without offset of any kind in advance upon the first day of each calendar month of the Term at the office of and made payable to **Blue Canon, LLC Attn: Michael Shapiro at 21 Terrell Road, Newport News, VA 23606**, or at such other place as Landlord may, from time to time, designate in writing.

For each Lease Year after the fourth renewal term, if any, the Base Rent will be increased to an amount determined by adding **five percent (5%)** to prior Lease Year's Base Rent. Lease year means each 12 month period elapsing after (i) the Commencement Date if the Commencement Date is the first day of the month, or (ii) the first day of the calendar month next succeeding the Commencement Date if the Commencement Date is not the first day of a month.

2. PAST DUE RENT AND LATE CHARGES: Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges that may be imposed upon by Landlord by terms of any mortgage or deed of trust covering the Building, the Development, Park, or Office/Warehouse. In such event that Tenant shall fail to pay, when the same is due and payable, any Base Rent, Additional Rent charges or adjustments, and if said sums have not been received in Landlord's Agent's office within ten (10) days of their due date, then Tenant shall pay to Landlord's Agent a "Late Charge" of One Hundred Dollars (\$100.00) or five percent (5%) of the amount due on all rents, whichever is greater. Tenant further covenants and agrees to pay Landlord as a "bad check" or "returned check" charge the amount of Twenty-five Dollars (\$25.00) per bad check.

Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account and may be applied to any amounts which are due as the Landlord may see fit. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or any letter accompanying such check, that such lesser amount is payment in full shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

3. SECURITY DEPOSIT: Intentionally Deleted

4. COMMON AREA CHARGES, UTILITIES:

Tenant shall promptly pay as **Common Area Charges** all charges when due for **electricity, water and sewerage, trash, and other utility charges and utility taxes in connection with the use of the Demised Premises**. Tenant is part of a common water system. Tenant agrees to reimburse Landlord, for water and sewer charges, based upon Landlord estimates for Tenant. Further, Landlord reserves the right to install and read sub meters for individual Tenant Premises, when on a

common water system and to invoice Tenant for its water consumption. Landlord shall, in no event, be liable for any interruption or failure in supply of any such utilities to the Premises. Property is on common trash service, and tenant agrees to pay its pro-rata share of the dumpster service provided to the building. **Tenant's electrical system has a subpanel from the adjacent Tenant in Suite 400, also occupied by the City of Newport News. With the commencement of this Lease Tenant shall assume the electric charge for the use of both suites electricity for such time as Tenant occupies both suites.** These Common Area Charges shall collectively be estimated at **\$102 per month** in the first lease year, and shall increase by 3% annually.

5. **REAL ESTATE TAXES:** Landlord covenants that it will pay, when due, all real estate taxes and assessments imposed against the Demised Premises.

6. **INSURANCE BY LANDLORD:** Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the premises, providing protection against all perils included within the classification of fire and extended coverage.

7. **NO ASSIGNMENT OR SUBLEASE:** Tenant covenants not to assign, mortgage or encumber this Lease nor sublet or suffer or permit the Premises or any portion thereof to be used by others without the prior written consent of the Landlord in each instance. The transfer of fifty percent (50%) or more of Tenant's stock, if Tenant is a corporation, or the transfer of any general partnership interest or the transfer of fifty percent (50%) or more of a limited partnership interest in Tenant, if Tenant is a partnership, or the dissolution of Tenant as a corporation or partnership, is regarded as an assignment of the Lease, and the same is not permitted without the prior written consent of the Landlord. Tenant and any guarantors shall remain liable for the Lease, its terms and covenants in such event that the Landlord does grant consent to an assignment or sublease, and shall guarantee the performance of the assignee or subtenant without the need for guarantor's signature or consent thereto.

In the event of any sublease or assignment of all or any portion of the Premises where the rent in the sublease or assignment exceeds the Base Rent or pro rata portion of the Base Rent, as the case may be, for such space in the Lease, Tenant shall pay the Landlord monthly, as Additional Rent, at the same time as the monthly installments of rent hereunder, all of the excess rent paid for the sublease or assignment over the Base Rent reserved in this Lease.

Landlord's approval of any subtenant or assignee is conditioned upon there being no additional compliance required with all laws, rules and regulations of any governmental authority required of either the Landlord or the Tenant and such approval shall create no responsibility or liability on the part of the Landlord for any non-compliance with laws, rules and regulations of any governmental authority. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than the Tenant, without the prior written consent of the Landlord, the Landlord is permitted to collect Rent directly from the assignee, subtenant or occupant and otherwise enforce this Lease against such entity, and to apply the net amount collected to all Rent herein due and reserved, but the application of same Rent shall not be regarded as implied or written consent to any assignment or sublease. Collection of Rent shall not be deemed a waiver of the covenants contained in this Article 7. The acceptance of the assignee, subtenant or occupant as Tenant does not constitute a release of the performance of the covenants required to be performed by Tenant.

8. **CONTINUOUS OPERATION:** Intentionally omitted.

9. **INSURANCE BY TENANT:** Tenant shall, during the Lease Term, procure at its expense and keep in force the following insurance:

(a) Commercial general liability insurance naming the Landlord and Agent as an additional insured against any and all claims for bodily injury and property damage occurring in, or about the Premises arising out of Tenant's use and occupancy of the Premises. Such insurance shall have a combined single limit of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence with One Million Dollars (\$1,000,000) aggregate limit. If the Tenant has other locations that it owns or leases the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to Landlord and Landlord's insurance shall be in excess thereto. In no event shall the limits of such insurance be considered as limiting the liability of Tenant under this Lease. Such coverage will provide that if the exterior and/or the interior of the building in which the Demised Premises are located are damaged by persons breaking, or attempting to break, into the Demised Premises, or by vandals, the cost of repairing any and all damage to the Demised Premises and said building caused thereby over and above any insurance proceeds received by Landlord in respect thereto will be borne by Tenant and promptly paid by Tenant to Landlord.

(b) Personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises for perils covered by the causes of loss-special form (all risk).

(c) Workers' compensation insurance in accordance with statutory law and employers' liability insurance.

Insurers shall be licensed to do business in the state of Virginia and domiciled in the USA. Any deductible amounts under any insurance policies required hereunder shall not exceed \$1,000. Certificates of Insurance (certified copies of the policies may be required) shall be delivered to Landlord prior to the Commencement Date and annually thereafter at least thirty (30) days prior to the expiration date of the old policy. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Landlord as required by this Lease. Each policy of insurance shall provide notification to Landlord at least thirty (30) days prior to any cancellation or modification to reduce the insurance coverage.

Tenant shall have the right to self-insure for any insurance coverage which it is obligated to carry pursuant to the terms hereof.

10. ACCEPTANCE OF PREMISES: After Tenant opens for business in the Premises, it shall have no legal or equitable remedy based either upon a claim that Landlord failed to deliver possession in accordance with the Lease or based on a claim that the size, location, lay-out dimensions or construction of the building, in which the Premises area located, or that the parking lots or other Common Areas, were not completed and/or furnished in accordance with the terms of this Lease. Tenant shall have such rights at law or equity to which it may be entitled in the event that the Landlord defaults hereunder on any of its obligations. ****See Section 40****

11. ESTOPPEL CERTIFICATE: Tenant shall, from time to time and within ten (10) days after request therefore by or on behalf of the Landlord, execute, acknowledge and deliver to the Landlord or its Agent a written Estoppel Certificate in recordable form. The Estoppel Certificate shall certify to the Landlord, its Mortgagee or other party designated by the Landlord, as of the date of such Estoppel Certificate that (a) the Tenant is in possession of Leased Premises and is currently paying the Base Rent and Additional Rent reserved hereunder; (b) the following Lease dates are and have been established: the Commencement Date and Termination Date of the Lease and the date upon which the Tenant started to pay rent; (c) that this Lease is unmodified and in full force and effect, or if there have been modifications, that the same are in full force and effect as modified and setting forth such modifications; (d) that there are no existing set-offs or defenses against the enforcement of any rights or remedies of the Landlord, or any duty or obligation of the Tenant, hereunder, and if so, specify the same in detail; and (e) that the Tenant has no knowledge of any event having occurred that will authorize the termination of this Lease by the Tenant, or that the Tenant has no knowledge of any uncured defaults on the part of the Landlord under this Lease, or if the Tenant has such knowledge, specifying the same in detail.

12. SUBORDINATION AND ATTORNMENT: Tenant agrees that this lease is subordinate to any mortgage or lien resulting from financing or refinancing, now or hereafter placed upon the land on which the Leased Premises have been built or upon any building hereafter placed upon the land, of which the Demised Premises are a part. Tenant will, further, attorn to and acknowledge the Landlord's successor in interest or title, including the foreclosure purchaser or purchasers as the Landlord hereunder. This shall be self-operative and no further instrument of subordination shall be required by any mortgagee. However, Tenant shall, upon the request of any party in interest, promptly execute such instrument or certificate to carry out the intent hereof.

13. QUIET ENJOYMENT: Landlord hereby covenants that Tenant, upon fully complying with and promptly performing all the terms, covenants and conditions of this Lease, on its part to be performed, and further, upon the prompt and timely payment of all rental sums due hereunder, shall have and quietly enjoy the Premises for the Lease Term set forth herein.

14. LAYOUT AND PARKING: The Leased Premises are defined on Page 1 of this Lease Agreement under the heading titled "Premises". The Leased Premises as defined sets forth the general description of the Building, but shall not be deemed to be a warranty by the Landlord that the Premises are built exactly, per all the dimensions as indicated on Page 1. Landlord hereby reserves its right to increase, reduce, modify or alter the dimensions and locations of roadways, parking lots, sidewalks and buildings, as Landlord shall, from time to time, deem proper at its discretion, provided same changes, additions or eliminations do not unreasonably interfere with Tenant's use of the Premises. Tenant shall have the non-exclusive use, in common with Landlord, other Tenants, their guests and customers, employees and invitees of the automobile parking areas, driveways and sidewalks and such loading facilities, which may be designated from time to time by Landlord. All Common Areas and facilities and parking lots shall be subject to the exclusive control and management of the Landlord. Landlord shall have the right to establish, modify, change and enforce rules and regulations with respect to the Common Areas, common facilities and parking lot, and Tenant agrees to abide and conform with such rules and regulations.

15. LANDLORD MAINTENANCE: Landlord will, at its own cost and expense and with reasonable dispatch after being notified in writing by Tenant of the need therefor, make such repairs to the exterior of the Demised Premises (including the roof, gutters, downspouts and outside walls, but excepting all glass and doors), as may be necessary to keep the same in good condition of repair. However, (a) if the need for such repair is occasioned by a casualty resulting from the negligence or willful act of Tenant, or any of his agents, suppliers, shippers, invitees, employees or contractors, and (b) if such casualty shall not be within the coverage of a standard fire insurance policy with extended coverage, then such repairs shall likewise be made by Landlord but shall be charged to and be paid for by Tenant.

16. ROOF: Tenant agrees that it will not cut or penetrate the roof, drive nails into or place any debris on the roof of the building of which the Demised Premises constitute a part. Any roof alterations or repairs necessitated by Tenant's requirements (i.e. stove vents, antennae, etc.) shall be done at Tenant's expense and authorized only by Landlord's written permission and under Landlord supervision, or performed by or supervised by a roofing contractor approved by Landlord in writing. Tenant shall also pay to Landlord on demand the cost incurred by Landlord of roof repair or roof re-seal, when Tenant is a prime cause for the need to repair or re-seal, as for example, the removal of a hood vent and the necessary re-seal. Tenant will reimburse Landlord for the cost to reinstate any warranty of roofing materials if Tenant's actions have voided or diminished any such warranty.

17. TENANT MAINTENANCE: Tenant covenants that it will, during the Term hereof, and at its own cost and expense, maintain and upkeep the interior of the Demised Premises; including, without limitation, the heating, ventilating and air conditioning system, a.k.a. the HVAC system (including compressors and other major components), toilets, pipes, plumbing, wires and conduits, electric lines, electric panel box, any outdoor lighting on Tenant's circuit such as rear door lights and signage, storefronts and storefront glass, doors, and store fixtures in good condition and repair, making such

replacements as may be necessary from time to time. Tenant understands and agrees that it is also responsible for any condensation in and/or around the HVAC system and its ductwork. Tenant agrees that if Tenant fails to make any repair or to remove any debris as required in the lease, within five (5) days after the receipt of written notice from Landlord in respect thereto, such may be undertaken by Landlord, and Tenant agrees to reimburse Landlord promptly for the cost thereof.

Per the requirements of this Article, the Tenant agrees to obtain and maintain from a reputable company (or using its own certified HVAC technicians) a service maintenance contract on the HVAC system and furnish the Landlord or its Agent with a copy of said contract at Landlord's request. Near the end of its tenancy and upon the written request of the Landlord, Tenant shall forward copies of all inspection and service reports by its HVAC contractor to the Landlord or its Agent, stating in detail the condition of the HVAC system. In lieu of hiring an HVAC contractor, Tenant may elect to provide maintenance to the HVAC system via its own qualified employees. Any necessary repairs or replacements indicated by such report, in order to place the system in a good, workmanlike condition, shall be made by Tenant at Tenant's expense. Landlord reserves the option, at Landlord's expense, to have contractor of its choice to inspect the system for the purpose of determining any necessary steps to be taken by Tenant to place the system in a good, working condition. **Notwithstanding anything in this Section 17 to the contrary, Landlord warrants the HVAC system for the first 180 days of the Lease. Thereafter, provided Tenant is in compliance with this Section 17, Tenant shall be responsible for the first \$750 of repairs to the HVAC system per unit per year, and Landlord shall be responsible for either paying the remainder, or utilizing its contractor to effect repairs to the unit.**

18. ADDITIONAL TENANT COVENANTS:

(a) Tenant shall not make alterations, additions or improvements to the building structure of which the Leased Premises are a part without first obtaining Landlord's written approval and consent. For purposes of this Lease, the structural components of the Leased Premises are hereby defined as the foundation, structural steel, roof, exterior walls, building front components including front glass and doors, back doors, or loading doors, existing interior plumbing improvements, exterior plumbing lines, HVAC unit components and ductwork, electric service, ceiling and light fixtures and Common Areas. Tenant shall present to Landlord plans and specifications for any such work at the time approval is sought from Landlord for Tenant structural modifications. Tenant shall make all such structural alterations at its own expense, after first obtaining Landlord's written approval of Tenant plans and specifications. Landlord's approval of any plans, specifications or work drawings shall create no responsibility or liability on the part of the Landlord for their completeness, design sufficiency or compliance with all laws, rules and regulations of governmental agencies or authorities.

(b) Tenant has the right to install its trade fixtures in the Demised Premises, provided that such installation does not damage the construction of the building nor interfere with the structural components of the building of which the Leased Premises are a part. Such installations shall be at the sole risk and at the expense of the Tenant. All fixtures installed by Tenant shall remain the property of Tenant, and if the Tenant is not in default of the Lease, its terms and covenants herein, the same fixtures shall be removed by Tenant at the expense of the Tenant at the end of the Lease Term. Tenant further agrees to repair and/or to reimburse Landlord for the cost of repair for any damages to the Demised Premises caused by the installation and removal of its trade fixtures. In the event that fixtures are left behind or abandoned, Tenant shall pay to Landlord any expenses associated with disposal of same or repairs to the Premises caused by the removal of same fixtures.

(c) Tenant will not use nor permit the Premises to be used for any illegal or immoral purpose. Tenant, at Tenant's sole expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force, which shall impose any duty upon the Landlord or Tenant with respect to the use, occupation or alteration of the Premises, and that the Tenant shall use all reasonable efforts to fully comply with the Americans With Disabilities Act. Tenant shall use reasonable measures to prevent its invitees from disturbing or interfering with other tenants or their invitees.

(d) Tenant agrees to contain within its Premises any and all noise, music, or odors and/or aromas, to the extent that no nuisance will be created to its neighbor Tenants, and all other Premises and Common Areas within the Building, the Development or Park shall be free from noise or aromas which originate from Tenant's Premises.

(e) Tenant shall store all trash, rubbish and garbage in fully closed containers at the rear of the Leased Premises and Tenant shall pay all such costs incidental to the removal thereof. Tenant shall not burn or otherwise dispose of any trash, waste, rubbish or garbage in and or about the Leased Premises. Any expenses incurred by Landlord related to the removal of the same shall be reimbursed by Tenant.

(f) Tenant covenants that it will, at its own expense, take such steps as shall be necessary to keep the Leased Premised free of rodents, insects and other pests except termites, which treatment if termites are found, shall be the expense of the Landlord.

(g) Tenant shall not make any use of the Premises which would make voidable or void any policy of fire or extended coverage insurance covering any of the Buildings, the Development or Park or cause the Premises to become uninsurable. Tenant covenants that, without prior written consent of the Landlord, Tenant will not do anything which will increase the rate of fire insurance premium on the building. If by reason of any use by Tenant of the Premises or the keeping by Tenant of any flammable substances in the Premises, the hazardous insurance premiums or policies maintained by landlord shall be increased over normal rates for Office/Warehouse space in the Development, the amount of the increase in the Landlord insurance premium shall be paid to Landlord by Tenant from time to time on demand. Tenant hereby covenants that it shall cease and desist any activity so affecting the insurability of the Building, the Development or Park upon written demand of the Landlord.

(h) Tenant will not use nor permit to be used any advertising medium or device such as audio broadcast, loudspeaker, radio, public address system, remote radio station, or flashing or digital reader sign, without the prior written consent of the Landlord.

(i) Tenant shall not hold any fire, bankruptcy, going-out-of business or auction sales, without the prior written consent of the Landlord.

(j) Tenant shall not use the sidewalks or any other portions of the Common Areas for any purpose related to the selling of merchandise or services without the Landlord's consent in writing.

(k) Tenant shall notify Landlord in writing of all accidents or security-related incidents, i.e. crimes against person(s) and property, which occur in or about the Premises.

(l) No radio or television aerial or satellite dish or disk shall be erected on the roof or exterior walls of the Leased Premises or on the grounds or on the Building, or Common Areas without the written consent of the Landlord in each instance. Any aerial so installed without such written consent shall be subject to removal by Landlord or its Agent without notice at any time, and Tenant shall pay Landlord, on demand, the cost of such removal.

(m) Tenant shall keep the Premises at a sufficient temperature to prevent freezing of pipes or make such arrangements with the local Utility to prevent freeze-ups.

19. HAZARDOUS SUBSTANCE - GENERAL The term "Hazardous Substances," as used in this lease shall mean pollutants, contaminants, toxic or hazardous wastes, petroleum products, asbestos or any other substances the use and/or the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law," which term shall mean any federal, state or local law, ordinance or other statute of a governmental or quasi-governmental authority relating to pollution or protection of the environment. Tenant hereby agrees that (i) no activity will be conducted on the Premises that will produce any Hazardous Substance, except for such activities that are part of the ordinary course of Tenant's business activities (the "Permitted Activities") provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by Landlord; Tenant shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials and in such quantities that are used in the ordinary course of Tenant's business (the "Permitted Materials") provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws and approved in advance in writing by Landlord; Tenant shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency; (iii) no portion of the Premises will be used as a landfill or a dump; (iv) Tenant will not install any underground tanks of any type; (v) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute a public or private nuisance; (vi) Tenant will not permit any Hazardous Substances to be brought into the Premises, except for the Permitted Materials described above, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal, and all required cleanup procedures shall be diligently undertaken pursuant to all Environmental Laws. Landlord or Landlord's representative shall have the right but not the obligation to enter the Premises for the purpose of inspecting the storage, use and disposal of Permitted Materials to ensure compliance with all Environmental Laws. Should it be determined, in Landlord's sole opinion, that said Permitted Materials are being improperly stored, used, or disposed of, then Tenant shall immediately take such corrective action as requested by Landlord. Should Tenant fail to take such corrective action within 24 hours, Landlord shall have the right to perform such work and Tenant shall promptly reimburse Landlord for any and all costs associated with said work. If at any time during or after the term of the lease, the Premises is found to be so contaminated or subject to said conditions due to the actions of Tenant, Tenant shall diligently institute proper and thorough cleanup procedures at Tenant's sole cost.

20. LANDLORD INSPECTION AND ACCESS: Landlord or its Agent, employees and/or contractors shall have the right to enter the Premises at any reasonable time to examine the same; to show the Premises to prospective purchasers, lenders, or prospective tenants of the Premises; and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. If Tenant is not personally present to permit entry and an entry is necessary, Landlord or its Agent may, in the case of emergency, or if the Premises are unsecured and temporarily unoccupied, forcibly enter or secure the same, or take such other steps to address the emergency that Landlord deems appropriate, without rendering Landlord or Agent liable therefor. Otherwise, all such work and installation shall be done, so far as practical, so as not to unreasonably interfere with Tenant's use of the Premises. Tenant also hereby grants unto Landlord and its Agent the right, within four (4) months prior to the termination of said Lease Term, to post and to remain thereon without hindrance or destruction, the usual notice of "For Rent" on the front glass, yard, or walls of said Premises. The exercise of any of these reserved rights by Landlord shall not be deemed as an eviction or disturbance of Tenants use, possession and quiet enjoyment of the Premises, and shall never render Landlord liable in any manner to Tenant or any other person.

21. WAIVER OF SUBROGATION: Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of use, or damage to, either party's property, to the extent that such loss or damage is insured by their insurance policy. The provisions of this clause shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible.

22. Intentionally omitted.

23. LIENS: Tenant agrees that it will, at all times during the Term of this Lease, take any and all steps reasonably necessary to prevent the filing of mechanics liens against the Leased Premises. Tenant shall promptly pay or otherwise discharge, any and all such claims, expenses and liens arising out of the actions of Tenant, including the mechanic's, materialmen's and other laborer's liens asserted or claimed against the Premises or any part thereof.

24. FIRE AND/OR DESTRUCTION: If the Leased Premises shall be damaged by fire or other casualty during the Term hereof, Landlord agrees that it will restore the structural components and items, as defined in Article 18(a) hereof, with reasonable dispatch to substantially the same condition that they were in so far as the proceeds from Landlord's insurance permit and, further provided that, Landlord's mortgagee does not require insurance proceeds to be paid to it. Once Landlord restoration work is complete, and since time is of the essence, Tenant's rent payment shall re-commence on the thirtieth (30th) day after Landlord notifies Tenant in writing that the Premises are ready for fixturing. The Tenant shall be responsible, at its sole cost and expense, to repair or replace any and all of the Tenant's fixtures, equipment and leasehold improvements which were damaged or destroyed by the same insured cause. The rent payable hereunder shall be equitably and proportionately abated, according to loss of use to Tenant, during the period of time intervening between the date of such fire and/or destruction and the date that the Lease Premises are restored. However, if the damage is due to the fault or the negligence of the Tenant or its employees, there shall be no abatement of rent. If such destruction occurs during the last two (2) years of the term and exceeds fifty percent (50%) of the insurable value of the Leased Premises at the time such destruction occurs, Landlord, at its option, may terminate this Lease as of the date of such destruction by giving Tenant written notice of its intention to do so within sixty (60) days after such date of destruction. If this Lease is so terminated, then the rent payable hereunder shall be abated as of the date of same destruction and Tenant shall remove all its property from the Leased Premises within thirty (30) days after the receipt of written notice of termination. Unless Landlord gives such notice, this Lease shall remain in full force and effect and Landlord shall repair such damage as its expense, as expeditiously as possible under the circumstances.

25. FORCE MAJEURE: In the event that either party hereto shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of the party delayed in performing the work or doing acts required under the terms of this Lease, then performance of such acts shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that the provisions of this Lease Article shall not operate to release Tenant from Lease nor to excuse Tenant, nor shall Tenant in any event be excused from prompt payment of Base Rent, Additional Rent and all other charges due Landlord by Tenant.

26. EMINENT DOMAIN: If all the Premises are condemned or taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the date that the Tenant is required to vacate the Premises and all Base and Additional Rent shall be paid up to and until same date of termination. If only part of the Leased Premises shall be taken and the size of the Premises are proportionately reduced, then the Tenant is entitled to an equal and proportionate reduction in Base Rent and Additional Rent, or Tenant may elect to terminate this Lease. Further, Landlord shall, as expeditiously as possible, repair the remaining portion of Leased Premises to the extent necessary to render the same suitable for which the Premises were leased. Tenant hereby waives any right that it may have to any condemnation award or sum paid under threat of condemnation as a result of a complete or partial asking of the Leased Premises and/or any portion of the Building, or its Common Areas. After partial taking of the Building or its common areas, the Landlord, within a reasonable time thereafter, shall repair or reconstruct the remaining portion of the Building and/or its Common Areas to the extent necessary to make the same a complete architectural unit.

27. DEFAULT:

(a) By Tenant: The occurrence of any one of the following events constitutes a default by the Tenant and a breach of this Lease and its covenants by the Tenant, if such default, breach or non-performance is continued and not cured within five (5) days after written notice from Landlord: (a) the vacating or abandonment of the Premises by Tenant; (b) the failure by Tenant to make any payment of Base Rent, Additional Rent, and Common Area Charges and adjustments on or before the due date thereof; (c) the failure by Tenant to perform any covenants herein or the breach by Tenant of any Lease covenants herein, other than those described in sections (a) and (b) of this Article 27, and the further failure by Tenant to cure such covenant, breach or non-performance, or to commence to cure and diligently pursue the cure of the covenant, breach or non-performance which cannot be fully remedied within five (5) days; (d) the filing of a petition for Tenant's bankruptcy, insolvency, or general assignment for the benefit of its creditors, or receiver appointment for Tenant for the substantial part of its assets and properties and such receiver is not removed within five (5) days after its appointment. If the Tenant shall default as described in this Article 27, or in the performance of any covenant contained in this Lease, and if such default is repeated once within the next twelve months then, notwithstanding that such defaults shall have been cured within the period after notice as herein provided, any further similar default within such twelve month period shall be deemed a Tenant Default which cannot be cured, notwithstanding provisions for cure provided in this Lease. Upon such default, the Landlord may proceed, with five days' notice but no opportunity for cure, to exercise its remedies upon default.

(b) By Landlord: Landlord shall be in default if Landlord fails to substantially observe or perform Landlord's covenants, conditions, agreements, or obligations contained in this Lease and such failure continues uncorrected for a period of five (5) days after notice thereof in writing from Tenant to Landlord, except with regard to matters for which compliance cannot be completed within such five (5) days, provided Landlord promptly commence, and pursues diligently and in good faith, actions required for compliance.

28. REMEDIES:

(a) Of Landlord: In the event of Tenant Default, including Tenant's abandonment or vacating the Premises, Landlord shall have the right, in addition to all other rights and remedies provided by the law, either to terminate this Lease,

and/or to re-enter and take possession of the Premises, peaceably or by force, and/or to change the locks thereto and to remove any property and merchandise therein, without liability to Tenant for damage arising therefrom and without obligation to Tenant to store any merchandise and property. Further, Landlord is under no obligation to Tenant, after default or abandonment, to re-let the Premises in the name of Tenant or for the benefit of the Landlord. Landlord may, at its option and without subsequent notice to Tenant, re-let the Premises for such term and on such covenants and purposes as Landlord, in its sole discretion, may determine are in the best interest of the Landlord, including re-renting for free or abated rent. Landlord may collect and receive all rents derived therefrom and apply the same, after deduction of appropriate expenses, to the payment of the rent overdue and payable hereunder from the Tenant in default. The Tenant in default shall remain liable for any deficiency. Further, Landlord shall not be responsible for or liable for any failure to re-let the Premises or any part hereof, or for any failure to collect any rent connected therewith. The Landlord's recovery of possession of the Premises by any means shall not relieve the Tenant of its obligation to pay Base Rent, Additional Rent or Additional Rent Adjustments through the term of the Lease, including any extensions in effect at the time of default under which Tenant then occupies the Premises.

Acceptance by Landlord of delinquent rent from Tenant after Tenant default shall not cure such default or entitle Tenant to possession of the Premises. Tenant hereby expressly waives any and all right of redemption, if any, granted by and under any present or future law, in the event that Tenant shall be evicted or dispossessed for any cause in default or in the event that the Landlord obtains possession of the Premises by virtue of the remedies outlined in this Lease, or otherwise. The receipt by Landlord or its Agent of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any covenant hereof shall be deemed to have been agreed upon, unless explicitly reduced to written agreement and signed by Landlord and Tenant. All remedies of Landlord shall be cumulative.

(b) Of Tenant: In the event of Landlord Default, Tenant may, in addition to any other remedy available to Tenant under the law, give notice to Landlord that this Lease shall terminate upon the date specified in the notice, which date shall not be earlier than thirty (30) days after the giving of such notice, and upon the date specified in such notice, this Lease shall terminate. All remedies of Tenant shall be cumulative.

29. Intentionally omitted.

30. HOLDOVER AND SUCCESSIVE TENANT: Tenant acknowledges that possession of the Leased Premises must be surrendered to Landlord on the Termination Date or sooner. The parties hereto recognize and agree that the damage to the Landlord resulting from any failure to timely surrender possession will be extremely substantial, will exceed the Base Rent, Additional Rent charges payable hereunder, and will be impossible to measure accurately. Tenant therefore agrees that if possession of the Leased Premises is not surrendered to Landlord within twenty-four (24) hours after the Termination Date or sooner, then the Tenant shall pay to Landlord for each month and for any portion of a month during which the Tenant holds over in the Leased Premises a sum, as rent, equal to 1.25 times the aggregate of Base Rent plus Additional Rent charges which are payable under this Lease during the last month of the term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Leased Premises after the termination of the Lease Term, unless specifically agreed to in writing. The provisions of the Article shall survive the expiration or said sooner termination of Lease Term.

31. TERMINATION AND SURRENDER: Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in as good as condition as they were found upon the Tenant taking possession of the Premises; except for ordinary wear and tear, reduction of the Premises by condemnation or damage by fire, destruction or other casualties or causes beyond Tenant's control. Tenant shall deliver to Landlord or its Agent all keys to the Premises and remove all its personal property, merchandise and trade fixtures and make such necessary repairs or reimbursement, pursuant to Articles 16, and Articles 18(b) found in this Lease. After Tenant vacating or Tenant abandonment, Landlord may elect to retain or dispose of, in any manner, Tenant alterations and improvements or Tenant's personal property that Tenant does not remove from the Leased Premises before or after the Termination Date of the Term. Title to any such Tenant alterations or Tenant's personal property that Landlord elects to retain or dispose of after the Term, shall vest to and in the Landlord. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any such alterations or personal property. Tenant is further liable to Landlord for Landlord's expenses and costs for removing and disposing of any Tenant alterations or Tenant personal property which Landlord does not elect to acquire. Tenant's obligation to Landlord existing at the time of termination, whether unmaturing, unliquidated or contingent, will survive termination or expiration of this Lease.

32. TENANT WAIVERS: The failure of Landlord to insist, in any one or more instances, to strict performance by Tenant as to any Lease covenants shall not be construed as a waiver by Landlord or relinquishment, in the future, of such covenants, but the same shall continue and remain in full force in effect. The receipt by Landlord or its Agent of rent with knowledge of a covenant breach hereof shall not be deemed a waiver of the same covenant breach, and no waiver by Landlord of any provision hereof shall be deemed to have been agreed upon unless expressed in writing and signed by the parties hereto.

Tenant hereby waives the benefit of the homestead exemption as to this Lease.

33. EXCULPATION: The term "Landlord" as used in this Lease means only the owner, for the time being or at the time of Lease execution by Tenant, of the building in which the Premises are located or the owner of a Lease of both said building and the land thereunder. Landlord shall be liable for the performance of its obligations hereunder only to the extent of Landlord's assets as they pertain to the Building, or the Leased Premises. The respective partners of the Landlord, their heirs, its Agent, its personal representatives, successors and assignees shall not be liable personally. Further, the liability of the Landlord shall not extend beyond the period of time of Landlord's ownership of the Premises.

34. **SUCCESSORS AND ASSIGNS:** All the terms, covenants and agreements of this Lease shall extend to and be binding upon the Landlord and be binding upon the Tenant and their respective heirs, administrators, executors, successors in interest or in title, assignees, subtenants, sublessees, concessionaires, marital communities, if any, and their respective assigns; and/or upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise. All the provisions, conditions and agreements of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Landlord and Tenant.

35. **NOTICES:** Any notice herein provided for to be given to Landlord shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid, addressed to **Blue Canon, LLC**, 21 Terrell Road, Newport News, VA 23606. Any notice herein provided for to be given to Tenant shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid, addressed to Tenant at the addresses below:

Director of Parks, Recreation & Tourism
Fountain Plaza Two
700 Town Center Drive, Suite 320
Newport News, VA 23606

With a copy to:
City Attorney
2400 Washington Avenue, 9th Floor
Newport News, VA 23607

If there is more than one Tenant, such as a Partnership, any notice required or permitted hereunder may be given by or to any one thereof, and shall have the same force and effect as if given by and to all thereof. Either party may, at any time, change its address for the purposes of notice hereof by sending a written notice to the other party stating the change and setting forth the new address.

36. **INTENTIONALLY OMITTED.**

37. **NO PAROLE REPRESENTATIONS:** Tenant hereby declares that: (i) no representation has been made to Tenant concerning the condition of the Demised Premises (ii) Tenant has been afforded full access to and has inspected and examined the Demised Premises and is renting the same in reliance upon Tenant's own knowledge and information, and (iii) Tenant has been informed that Landlord is not obligated to make any repairs to the Demised Premises during the term, except such, if any, as are specified in this Lease, and (iv) no negotiations respecting repairs, such as talking about repairs or securing estimates for such repairs, shall in any way obligate Landlord to make the repairs or obligate Landlord for any damage for failure to make the same.

38. **CONSTRUCTION:** The Lease shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia. Landlord, Tenant, and Agent all acknowledge the opportunity to review and approve the terms hereof before execution and to participate in its drafting. Therefore, this Lease shall not be construed against any party hereto as drafter of it.

39. **CONTRACT OF LANDLORD AND AGENT:** For the services rendered by Agent in procuring this Lease, Landlord agrees to pay a commission equal to Six percent (6%) of the rent scheduled to be collected during the initial lease term as identified in Section 41 below, payable over the term as collected.

40. **ADDITIONAL PROVISIONS:**

(a) Tenant may re-paint the walls in a neutral color, and will have no requirement to restore to original color.

(b) All major systems (HVAC, Plumbing, Electrical) shall be in good working order upon delivery to Tenant, however, if Tenant desires to rework HVAC systems within the premises, Landlord and Tenant agree to work together to minimize unnecessary or duplicated costs. **Tenant acknowledges that the HVAC system in Suite 500 does not have a gas line attached, and is not providing heat to the space.**

(c) It is understood and agreed between the parties hereto with respect to all payment obligations hereunder that Tenant shall be bound and obligated only to the extent that funds therefore shall have been appropriated for such purposes by the City Council of the City of Newport News.

41. **AGENCY DISCLOSURE:** Pursuant to Virginia Real Estate Board rules and regulations Section 6.3, Drucker and Falk, LLC makes the following disclosures:

I. In the above transaction, Drucker and Falk, LLC represented the Landlord.

II. In the above transaction, Agent shall receive their compensation from the Landlord exclusively.

III. The parties acknowledge that Michael Shapiro, Associate Broker for Drucker and Falk, LLC is also a member of Blue Canon, LLC.

The Landlord and Tenant acknowledge, agree with, and consent to the representation and compensation disclosed above.

42. **Intentionally omitted.**

43. **ENTIRE AGREEMENT:** This Lease contains the entire agreement of the parties hereto. Any and all oral or written agreements understandings, representations and warranties, promises and statements of the parties hereto or from their respective officers and directors or from their partners, Agents or brokers with respect to the subject matter of this Lease, and any matter not covered and mentioned in this Lease, shall be inferior and be merged in and by this Original Lease. No such prior oral or written agreement, understanding, representation or warranty, promise or statement shall be effective or binding for any reason or purpose, unless specifically set forth in this Original Lease. No provision of this Lease may be amended or added to except by an agreement in writing, signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

43. **LEASE SUBMISSION:** The submission of this Lease for examination does not constitute an offer to lease. This Lease shall become effective only upon execution hereof by both Tenant and Landlord.

TENANT'S STATUS: Tenant is a municipal corporation of the Commonwealth of Virginia.

IN WITNESS WHEREOF this Lease has been duly executed by the parties hereto, as of the date found on Page 1.

TENANT: City of Newport News, Virginia

LANDLORD: Blue Canon, LLC

BY: _____
Cynthia D. Rohlf, City Manager Date

BY: _____
Michael Shapiro, Managing Member Date

TENANT'S TAX I.D.:

Attest:

City Clerk

Approved as to form:

City Attorney

EXHIBIT A
to lease by and between
Blue Canon, LLC and
City of Newport News

