

RESOLUTION NO. 13328-20

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 DEED OF LEASE BY AND BETWEEN THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NEWPORT NEWS, VIRGINIA, AND THE CITY OF NEWPORT NEWS, VIRGINIA, DATED JUNE 23, 2020, FOR OFFICE AND STORAGE SPACE LOCATED AT 13771 WARWICK BOULEVARD, UNIT 29, 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 Deed of Lease by and between the Economic Development Authority of the City of Newport News, Virginia, and the City of Newport News, Virginia, dated June 23, 2020, for office and storage space located at 13771 Warwick Boulevard, Unit 29, in the City of Newport News, Virginia.
2. That a copy of the aforesaid Deed of Lease is attached hereto and made a part hereof.
3. This resolution shall be in effect on and after the date of its adoption, June 23, 2020.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JUNE 23, 2020

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

DEED OF LEASE

THIS DEED OF LEASE, hereinafter referred to as “this Lease”, dated this 23rd day of June, 2020, is made by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NEWPORT NEWS, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as “Landlord” and the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as “Tenant.”

WITNESSETH

1. LEASED PREMISES

Landlord hereby leases to Tenant and Tenant leases from Landlord for the term, at the rental, and upon all of the conditions set forth herein, the “Leased Premises,” consisting of approximately 2,422 rentable square feet of space, as shown on the attached **Exhibit A**, known as Unit 29, located in the Sherwood Shopping Center at 13771 Warwick Boulevard, Newport News, Virginia, 23602.

2. TERM

2.1 **Initial Term.** The initial term of this Lease shall be for a period of five (5) years, commencing on July 1, 2020 (“Commencement Date”) and ending on June 30, 2025 (“Expiration Date”) unless earlier terminated or later extended pursuant to any provision of this Lease (the “Initial Term”).

2.2 **Options for Renewal.** Provided that Tenant is not in default under the terms and conditions of this Lease, Tenant shall have the right to renew this Lease for two additional

successive periods of one (1) year (“Renewal Periods”) each under the same terms and conditions stated herein, provided Tenant gives Landlord notice in writing at its designated address of Tenant’s intention to exercise each option at least 60 days prior to the Expiration Date or the end of the Renewal Period, as applicable.

2.3 **Early Termination, Non-Appropriation.** It is understood and agreed between the parties hereto with respect to all payment obligations hereunder, including the payment of Base Rent, late charges, insurance premiums, and additional rent, that Tenant shall be bound and obligated hereunder only to the extent that funds therefore shall have been budgeted and appropriated in any fiscal year of Tenant by the City Council of the City of Newport News. In the event that no funds are budgeted and appropriated in any fiscal year for payments due under this Lease, Tenant shall immediately notify Landlord of such occurrence and this Lease shall terminate on the last day of the fiscal year for which appropriation is received, without penalty or expense to Tenant of any kind whatsoever.

3. RENT

3.1 **Base Rent.** Tenant shall pay to Landlord annually, without offset, at its designated address, as rent for the Leased Premises, the sum of SIX THOUSAND FOUR HUNDRED EIGHTEEN AND 30/100 DOLLARS (\$6,418.30) (\$2.65 per rentable square foot) (the “Base Rent”). The Base Rent shall be paid in monthly installments beginning on the Commencement Date.

3.2 **Additional Rent; Utilities.** Tenant agrees to pay Landlord annually, as additional rent, the sum of TEN THOUSAND SEVEN HUNDRED FIVE AND 24/100 DOLLARS (\$10,705.24) (\$4.42 per rentable square foot) (the “Additional Rent”). The Additional Rent shall

be paid in monthly installments beginning on the Commencement Date. The Additional Rent shall cover utilities for the Leased Premises, including electricity, water, sewer, pest control, and janitorial service. Tenant agrees to contract for any other utilities as may be necessary, including telephone and data service, in its own name, and to pay directly to the utility company the costs for such utilities.

4. ALTERATIONS AND ADDITIONS

4.1 Tenant Improvements. Tenant shall be permitted to perform an initial build-out of the Leased Premises to facilitate the Use specified in Article 5 hereof. Except as set forth herein, all alterations, installations, additions or improvements permanently affixed to the Leased Premises shall become the property of Landlord and shall remain upon, and be surrendered with, the Leased Premises upon expiration or termination of this Lease. Any and all equipment or trade fixtures which Tenant installs or causes to be installed shall remain the property of the Tenant and Tenant shall have the right to remove the same at Tenant's expense, provided that Tenant restores the Leased Premises to the condition existing immediately prior to the installation of the same. Tenant shall not without Landlord's prior written consent, which consent shall not be unreasonably withheld, make any additional material structural alterations, improvements, or additions to the Leased Premises. If Tenant makes any alterations, improvements, or additions to the Leased Premises without the prior written consent of Landlord as set forth herein, Landlord may require that Tenant, at Tenant's expense, remove any or all of the same. Tenant shall not, in any event, lose its right, title, or interest in any equipment or trade fixtures. Tenant further agrees to timely provide Landlord with plans and drawings for any improvements made by Tenant.

4.2 **Liens.** Landlord and Tenant both agree to bond, remove, or have removed any mechanic's, materialmen's, or other lien filed or claimed against any or all of the Leased Premises by reason of labor or materials provided for or at the request of Landlord or Tenant, respectively, or any of their respective contractors or subcontractors.

5. **USE OF PREMISES**

5.1 **Use.** Tenant hereby agrees that the Leased Premises will be used solely for general office use and storage space; provided, however, that Landlord may, in its sole discretion, approve other uses upon written request of the Tenant.

5.2 **Compliance with Law.** Tenant shall, at Tenant's expense, comply with all applicable statutes, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the term or any part of the term hereof regulating the use of the Leased Premises. Tenant shall neither use nor permit the use of the Leased Premises in any manner that will tend to create waste or a nuisance.

5.3 **Condition of Premises.** Tenant accepts the Leased Premises in "as is" condition.

5.4 **Surrender.** On the Expiration Date of the Initial Term or applicable Renewal Period, or on any sooner termination, Tenant shall surrender the Leased Premises to Landlord in the same condition as when received, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the Leased Premises occasioned by the removal of Tenant's fixtures, furnishings, and equipment.

6. ENCUMBRANCES; ASSIGNMENT AND SUBLETTING

6.1 Tenant shall not mortgage, pledge or encumber this Lease without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold.

6.2 Tenant shall not assign this Lease, or sublet or underlet any or all of the Premises, without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold.

7. MAINTENANCE AND REPAIRS

7.1 **By Tenant.** Tenant agrees during the initial term of this Lease and any Renewal Term, at its own expense, to provide for all necessary maintenance and repairs to the interior of the Leased Premises, and agrees to keep the interior of the Leased Premises in good condition.

7.2 **By Landlord.** Landlord agrees, at its own expense, to provide for all necessary maintenance and repairs to the exterior of the Leased Premises, including exterior windows and doors, and agrees to keep the exterior of the Leased Premises in good condition.

8. WAIVER OF SUBROGATION

Tenant and Landlord each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents, and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control to the extent that such loss or damage is covered by any insurance policy in effect at the time of such loss or damage. Landlord and Tenant will cause their respective insurers to issue appropriate waiver of subrogation endorsements to all policies of insurance carried in connection with the Leased Premises and the contents thereof.

9. INSURANCE

9.1 **Liability Insurance.** Tenant agrees that it shall at all times during the term hereof, at its sole cost and expense, carry and maintain comprehensive general liability insurance against claims for personal injury, including death and property damage, in, on or about the Leased Premises, such insurance to afford protection in the amount of not less than Ten Million Dollars (\$10,000,000) in the aggregate in respect to any one occurrence causing bodily injury, personal injury or death, and in the amount of Two Million Dollars (\$2,000,000) in respect to property damage. Landlord understands and agrees that Tenant may self-insure in lieu of procuring the insurance cited in this paragraph.

9.2 **Hazard Insurance.** At all times during the term hereof, Tenant shall, at Tenant's expense, procure and continue in force "all risk" fire and extended coverage insurance on the Leased Premises at the full replacement cost thereof, unless Tenant self-insures this risk, which self-insurance Landlord hereby consents to.

9.3 **Failure of Insurance Requirements.** If Tenant fails to provide any of the insurance required herein, Landlord may purchase the policies and all premiums shall be paid by Tenant to Landlord as additional rent, unless Tenant has self-insured the risks to be covered and provided Landlord with a statement of same.

10. CASUALTY

10.1 **Notice.** In case of any material damage to or destruction of all or any part of the Leased Premises, Tenant shall give prompt notice thereof to Landlord. Each such notice shall describe generally the nature and extent of such damage, destruction, or loss.

10.2 **Damage and Destruction.** If all or any of the Leased Premises is destroyed or damaged by fire or other casualty without the fault of Tenant, Tenant's servants, employees or agents, the damages shall be repaired by and at the expense of Landlord, and the rent, until such repairs shall be made, shall be apportioned according to the part of the Leased Premises which is usable by Tenant. If such partial damage is due to the fault of Tenant, Tenant's servants, employees or agents, without prejudice to any other rights and remedies of Landlord the damages shall be repaired by Landlord but there shall be no apportionment or abatement of rent. No penalty shall accrue for reasonable delay which may arise by reason of abatement of insurance on the part of Landlord or Tenant or any other cause beyond Landlord's control. If the Leased Premises are totally damaged or are rendered wholly untenable by fire or other cause, and if Landlord shall decide not to restore or not to rebuild the same, or if the building shall be so damaged that Landlord shall decide to demolish it, Landlord may, within ninety (90) days after such fire or other cause, give Tenant written notice of such decision, and thereupon the terms of this Lease shall expire upon the third day after such notice is given and Tenant shall vacate the Leased Premises and surrender the same to Landlord. If Tenant shall not be in default under this Lease, then upon termination of this Lease upon the conditions provided for in this section, Tenant's liability for rent shall cease as of the day following the casualty.

11. CONDEMNATION

If the Leased Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If less than the full amount of the Leased

Premises is taken by condemnation, Tenant may, at Tenant's option, to be exercised in writing within thirty (30) days after Tenant has received written notice of such taking or in the absence of such notice, within thirty (30) days after the condemning authority shall have taken title or possession, terminate this Lease as of the date the condemning authority takes title or possession.

If Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Leased Premises remaining.

Tenant shall be entitled to exercise its statutory rights to participate in the condemnation litigation. Tenant shall be entitled to any award for loss of or damage to Tenant's fixtures, improvements, removable personal property and any other interest Tenant has in or on the Leased Premises.

12. DEFAULT AND REMEDIES

12.1 Default by Tenant. The occurrence of any of the follow events shall constitute a material default and breach of this Lease by Tenant:

- (a) The abandonment of the Leased Premises by Tenant without payment of rent;
- (b) The failure of Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due where such failure shall continue for a period of ten (10) days;
- (c) The breach of any other covenant, condition, or agreement by Tenant under this Lease, when such breach continues uncorrected for a period of thirty (30) days after notice thereof in writing from Landlord to Tenant, except with regard to matters for which compliance cannot be completed within

thirty (30) days, provided Tenant promptly commences, and pursues diligently and in good faith, actions required for compliance.

12.2 **Remedies of Landlord.** In the event of any such default or Breach by Tenant, Landlord may, at its option, in addition to any other remedy available to Landlord under the law, give notice to Tenant 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.

12.3 **Default by Landlord.**

- (a) 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 thirty (30) days after notice thereof in writing from Tenant to Landlord, except with regard to matters for which compliance cannot be completed within such thirty (30) days, provided Landlord promptly commences, and pursues diligently and in good faith, actions required for compliance.
- (b) In the event Landlord mortgages, refinances, encumbers or otherwise finances its interest, and is in default of any payment to a third party thereunder, including any tax payments, Landlord shall timely notify Tenant of such status, and Tenant, in order to avoid a default, shall then have the right, but not the obligation, to make Landlord's payment and to cure Landlord's default, and to recover such amount from Landlord.

12.4 **Remedies of Tenant.** In the event of any such default or breach by Landlord, 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.

13. BROKERS

Tenant and Landlord each warrant and represent to the other that they have not engaged or dealt with a broker in connection with the consummation of this Lease.

14. HOLDING OVER

Tenant may continue in possession after the end of the Term herein only with permission of Landlord, which shall be in Landlord's sole discretion, and it is agreed that the tenancy thus created shall be a tenancy at will and can be terminated by Landlord by giving Tenant not less than thirty (30) days' written notice or by Tenant by giving Landlord not less than thirty (30) days' written notice to expire on the day of the month from which the tenancy commenced to run. In so continuing, Tenant agrees to keep and fulfill all the other conditions and agreements herein.

15. LANDLORD'S RIGHT OF ENTRY

Landlord and Landlord's agents shall have the right to enter the Leased Premises during the term of this Lease by appointment scheduled with Tenant, for purposes of (1) inspecting the Leased Premises; (2) showing the premises to prospective lenders, tenants, or purchasers; and (3) for purposes of maintenance, repairs, or additions to the Leased Premises. During any entry by Landlord to the Leased Premises, Landlord or Landlord's agents shall accord reasonable care to Tenant's property.

16. QUIET ENJOYMENT AND NON-DISTURBANCE

Tenant's right to quiet enjoyment of the Leased Premises during the entire tenancy shall not be disturbed in any respect by Landlord or its successors, transferees, mortgagees, and assigns if Tenant is not in default, and so long as Tenant shall pay the Rent and observe and perform all of the covenants and provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. In the event Landlord shall assign, sell, transfer, encumber all or any portion of the Leased Premises or its leasehold interest, by operation of law, foreclosure or otherwise, or if the Leased Premises become subject to the jurisdiction of the U.S. Bankruptcy Court, then it shall be deemed and construed without further agreement, in such event, that Tenant shall be promptly notified, and that any assignee, transferee, mortgagee, successor, buyer, or third party, including any person appointed by a U.S. Bankruptcy Court, hereinafter "Successor Landlord," has reaffirmed the Lease, attorned Tenant, and assumed and agreed to take subject to this Lease and Successor Landlord has agreed to carry out all covenants, terms and conditions of this Lease. In no event shall Landlord or Successor Landlord extinguish Tenant's interest by foreclosure.

17. NOTICES

Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be in writing, and deemed to have been provided after being sent as certified or registered mail in the United States mails to the following:

If to Tenant: City of Newport News, Virginia
 c/o City Manager
 2400 Washington Avenue
 Newport News, VA 23607

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

If to Landlord: Economic Development Authority of the City of Newport News
c/o Department of Development
2400 Washington Avenue, 3rd Floor
Newport News, Virginia 23607

w/ a copy to: Raymond H. Suttle, Jr., Esquire, or
Conway H. Sheild, III, Esquire,
Jones, Blechman, Woltz & Kelly, P.C.
701 Town Center Drive, Suite 800
Newport News, VA 23606

18. GENERAL PROVISIONS

18.1 **Complete Understanding.** This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between the parties hereto as to the same.

18.2 **Amendment.** This Lease may be amended by and only by an instrument executed and delivered by each party hereto.

18.3 **Binding Effect; Choice of Law.** This Lease shall bind the parties, their personal representatives, agents, successors in title, transferees, successors and permitted assigns. This Lease shall be given effect and construed by application of the law of the Commonwealth of Virginia and any action to enforce any provision of this Lease shall be brought and maintained in the Circuit Court for the City of Newport News, Virginia.

18.4 **Time of Essence.** Time shall be of the essence of this Lease.

18.5 **Headings.** The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

18.6 **Exhibits.** Each writing or plat referred to and attached as an exhibit hereto is made a part hereof.

18.7 **Severability.** No determination by any court or governmental body that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of any other provision thereof. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with applicable law.

18.8 **Authority.** Landlord and Tenant and each individual executing this Lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity and that this Lease is binding upon said entity in accordance with its terms.

18.9 **Consents.** Wherever in this Lease the consent of one party is required to an act of the other party, such consent shall not be unreasonably withheld or delayed.

18.10 **Force Majeure.** If Landlord or Tenant shall be delayed, hindered or prevented from the performance of any act required of it under this Lease by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act, or default of the other party, war or any other reason beyond the reasonable control of the party which is seeking additional time for the performance of such act, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a reasonable period, in no event to exceed a period equivalent to the

period of such delay. The commencement date and/or the expiration date for any term of this Lease shall be adjusted so as to move either or both forward, as the case may be, for the number of days of the excused delay.

18.11 **Jointly Drafted.** No party or parties to this Lease shall be deemed to be the drafter of this Lease, and if this Lease shall be construed by a court of law, such Court shall not construe any portion of this Lease deemed ambiguous against any party as the drafter.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NEWPORT NEWS, VIRGINIA** has caused these presents to be executed by Alonzo R. Bell, Jr., its Chair, and Florence G. Kingston, its Secretary/Treasurer, both in that behalf first duly authorized, and the **CITY OF NEWPORT NEWS, VIRGINIA** has caused these presents to be executed by Cynthia D. Rohlf, its City Manager, with its seal hereto affixed, duly attested by Mabel Washington Jenkins, its City Clerk, both in that behalf first duly authorized.

TENANT:

CITY OF NEWPORT NEWS, VIRGINIA

BY: _____
Cynthia D. Rohlf, City Manager

ATTEST:

APPROVED AS TO FORM:

Mabel Washington Jenkins, City Clerk

City Attorney

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

The foregoing instrument was acknowledged before me this ___ day of _____, 2020, by Cynthia D. Rohlf, City Manager, and Mabel Washington Jenkins, City Clerk, respectively, of the City of Newport News, Virginia on behalf of the City.

Notary Public

Registration No. _____

My Commission expires: _____

LANDLORD:

**ECONOMIC DEVELOPMENT AUTHORITY OF THE
CITY OF NEWPORT NEWS, VIRGINIA**

BY: _____
Alonzo R. Bell, Jr., Chair

ATTEST:

APPROVED AS TO FORM:

Florence G. Kingston
Secretary/Treasurer

Raymond H. Suttle, Jr.
Counsel for EDA

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Alonzo R. Bell, Jr., Chair, and Florence G. Kingston, Secretary/Treasurer, respectively, of the Economic Development Authority of the City of Newport News, Virginia on behalf of the Authority.

Notary Public

Registration No. _____

My Commission expires: _____

Exhibit A

Sherwood Shopping Center

