

ORDINANCE NO. 7644-20

AN ORDINANCE AUTHORIZING AN ENCROACHMENT UPON CITY OWNED PROPERTY KNOWN AS 304 23RD STREET, IN THE CITY OF NEWPORT NEWS, VIRGINIA, AS MORE PARTICULARLY SET FORTH HEREIN, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST 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, a Virginia limited liability company (“Railhouse”), owns a parcel of real estate in the City of Newport News known as 206 23RD Street, Newport News, Virginia (Tax ID No.315010319) (“the Property”); and

WHEREAS, the City of Newport News, Virginia owns a parcel of real estate adjacent to the Property, known as 304 23RD Street, Newport News, Virginia (Tax ID No. 315000121) (“the City Parcel”); and

WHEREAS, Railhouse has asked for an encroachment to allow it to construct stairway exits at the rear of the Property encroaching into an approximately 6 foot by 77 foot area on the City Parcel, as shown on the drawing attached to the proposed Encroachment Agreement between the City of Newport News, Virginia and Railhouse, LLC, a copy of which is attached hereto as Exhibit A (the “Encroachment Agreement”); and

WHEREAS, this encroachment can be facilitated without causing undue public danger or inconvenience, and with no adverse effects on the maintenance of the City Parcel, given the terms incorporated in the proposed 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 City Parcel at 304 23RD Street as described herein.

2. That the non-permanent, revocable encroachment is authorized subject to compliance with the terms of that certain Encroachment Agreement between the City of Newport

News, Virginia and Railhouse, LLC, a copy of which is attached hereto and made a part hereof.

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 by and between the City of Newport News, Virginia and Railhouse, LLC.

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

5. That this ordinance shall be in effect on and after the date of its adoption, August 11, 2020.

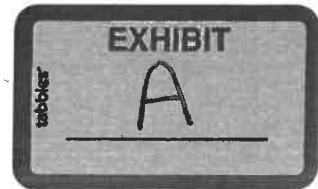
PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON AUGUST 11, 2020

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk



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

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

Consideration: \$0

**Encroachment upon:
Tax ID No. 315.00-01-21
304 23rd Street**

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the "Agreement") is made and entered into as of this 11th day of August, 2020, 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" or "City"), in favor of **RAILHOUSE, LLC**, a Virginia limited liability company, whose mailing address is 208 W. 25th Street, Norfolk, VA 23517 (hereinafter referred to as "GRANTEE").

WITNESSETH:

WHEREAS, Grantee is the owner of a parcel of real property (the "Property") known as 206 23rd Street, Newport News, Virginia, more fully described as:

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, known and designated as Lots FORTY (40), FORTY-ONE (41), FORTY-TWO (42) and FORTY-THREE (43), in Block TWENTY-THREE (23), as shown on that certain map entitled, "Map of the City of Newport News, Virginia,"

duly of record in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia in Plat Book 1, Page 4, to which reference is here made;

and

WHEREAS, Grantee acquired the Property by deed from Duefer Enterprises, LLC, Grantor, dated September 6, 2018, and recorded as Instrument No. 180013699 on October 18, 2018; and

WHEREAS, the Property is adjacent to a publicly-owned parcel of land owned by Grantor known as 304 23rd Street ("the City Parcel"); and

WHEREAS, Grantee wishes to install stairway exits for use at the rear of the Property which will extend into an approximately 6 foot by 77 foot area on the City Parcel as shown on the attached Exhibit A ("the Encroachment"); and

WHEREAS, City has determined that there is no objection to the Encroachment; and

WHEREAS, the City Council of the City of Newport News, by ordinance adopted at its meeting on August 11, 2020, approved the Encroachment herein described upon the aforesaid City Parcel.

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, insofar as its rights and interests are concerned, does hereby consent to the Encroachment, pursuant to Va. Code §15.2-2009 and §15.2-2011, and hereby grants permission to the Grantee to install and maintain the stairway exits within the City Parcel, subject to the following terms and conditions.

2. **Use.** Permission for the Encroachment is granted provided the construction, use, and maintenance thereof do not interfere with the safe and efficient construction, operation, maintenance or use of Grantor's property or any of the facilities therein ("Grantor's Facilities"), and further provided that such activities are in compliance with all applicable laws, ordinances, regulations, and codes. Grantee agrees it will not construct or cause to be constructed or erected any other structure or improvement upon the City Parcel.

3. **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 the

City Parcel and/or Grantor's Facilities and the safety and health of pedestrians, or the general safety and health of the public, 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 the City Parcel and/or Grantor's Facilities arising out of the use of the Encroachment within thirty (30) days of receiving an invoice from Grantor for such costs.

4. **Indemnity.** The Grantee 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.

5. **Insurance.** The Grantee will maintain general liability coverage in the amount of at least One Million Dollars (\$1,000,000) per occurrence, endorsed to name the Grantor as an additional insured thereon, and obtain an endorsement requiring the insurer to provide the City with at least thirty (30) days advance notice of cancellation (10 days' notice for cancellation due to non-payment of premium), and shall continue to provide the Grantor with updated certificates of insurance upon each renewal of the coverage. Failure provide or maintain the required insurance coverage shall result in termination of this Encroachment Agreement.

6. **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.

7. **Reservation.** Grantor reserves all rights of access to the City Parcel for construction, operation, and maintenance of its facilities without incurring any liability for damage to or loss of use of the Encroachment described herein or for inverse condemnation thereof. 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.

8. **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.

9. **Successors and assigns.** The terms of this Agreement are binding upon and shall inure to the benefit and obligation of the heirs, personal representatives, successors and assigns of the parties and their respective successors in title, but shall not

otherwise grant any rights to any entity not a party to this Agreement nor create any rights in any third-party beneficiary of this Agreement.

10. **Exhibit**. The Exhibit attached to this Agreement is 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

Collins L. Owens, Jr.
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 _____, 2020.

NOTARY PUBLIC

Registration No. _____

My Commission Expires: _____

GRANTEE

RAILHOUSE, LLC,
A Virginia limited liability company

By: _____
Jonathan A. Provost
Title: Manager

COMMONWEALTH OF VIRGINIA
CITY OF _____, 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 RAILHOUSE, LLC, by Jonathan A. Provost, its Manager, whose name is signed to the foregoing writing, has acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this ____ day of _____, 2020.

NOTARY PUBLIC

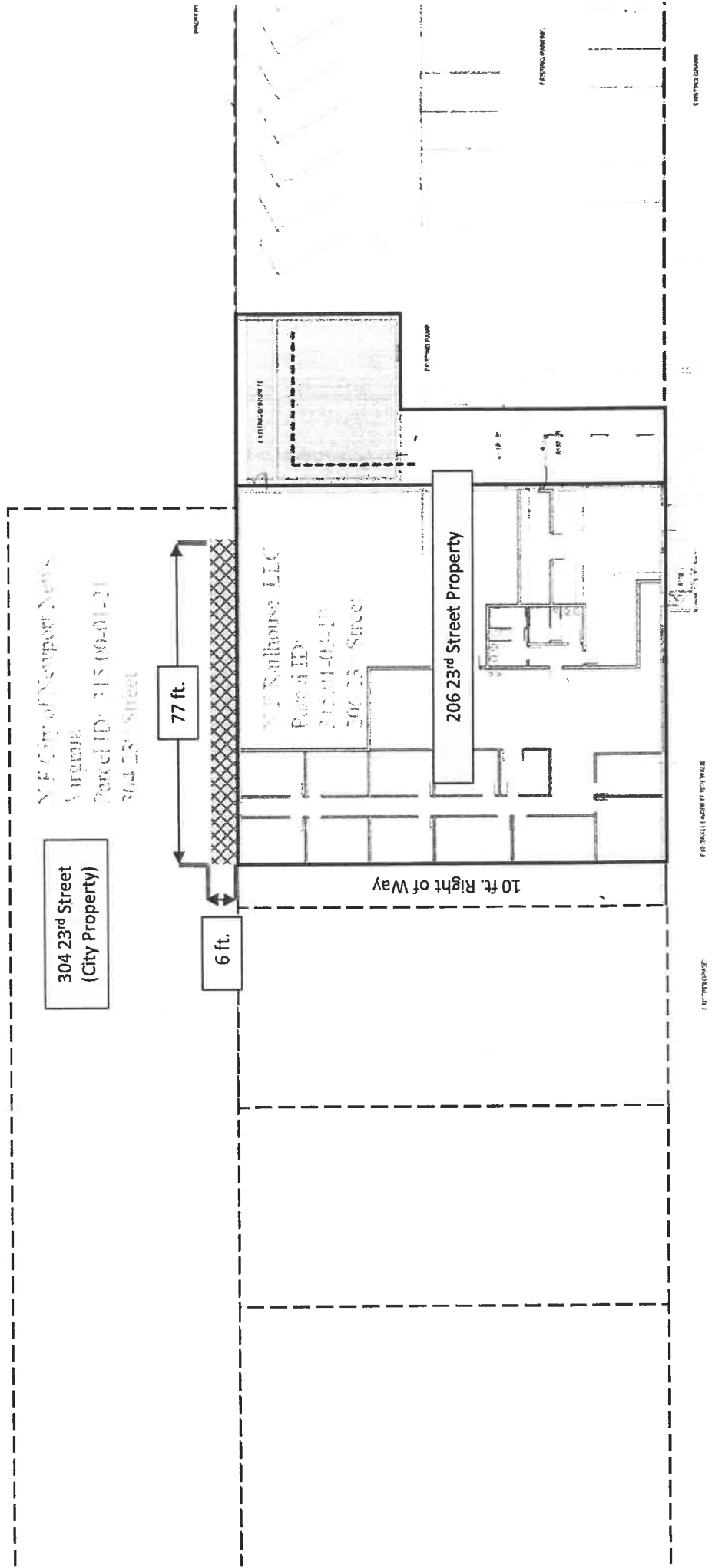
Registration No. _____

My Commission Expires: _____

EXHIBIT A

EXHIBIT A

Virginia Port Authority



Denotes Encroachment Area

206 23rd St. Access Road