C: City Attorney's Office

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

January 28, 2014

From: Bernard A. Pishko, City Attorney

Subject: Amendment of Lease Agreement – D'Egg

Reviewed: Ronald H. Williams, Jr., Assistant City Manager

Ward/Superward: Ward 2 - Downtown

Approved: Marcus D. Jones, City Manager

Item Number: **PH-12**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Phillip Decker
Philly D, LLC
204 Main Street, Norfolk, Virginia 23510

III. **Description**

This agenda item is an amendment to an existing lease agreement whereby Philly D, LLC (D'Egg), as lessee, will be given the option to extend its lease term for an additional five years; the current lease expires on December 31, 2018.

IV. **Analysis**

The option given to Philly D, LLC to extend its lease for an additional 5-year term will allow for an amortization of the renovation costs that the owner is incurring as he updates the space.

V. **Financial Impact**

The rent to be paid will increase by 3% annually.

VI. **Environmental**

N/A

VII. **Community Outreach/Notification**

Public notification for this agenda item was conducted through a published notice for the public hearing and through the City of Norfolk's agenda notification process.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This agenda item has been coordinated with City Attorney's Office.

01/08/2014 tsv BAP

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING AN AMENDMENT TO THE LEASE AGREEMENT WITH PHILLY D, LLC, FOR 204 MAIN STREET, A PROPERTY IN THE CITY OF NORFOLK

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the amendment to the lease agreement between the City of Norfolk, as Landlord, and Philly D, LLC, as Tenant, a copy of which is attached hereto, is hereby approved.

Section 2:- That the City Manager is authorized to execute said amendment for and on behalf of the City.

Section 3:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

NORFOLK

Office of the City Manager

Phillip Decker
Philly D, L.L.C.
109 E. Main Street
Norfolk, Virginia 23510

Re: Amendment of Lease Agreement dated August 19, 2003, for Premises at 204 Main Street

Dear Mr. Decker:

This letter is to inform you that the City of Norfolk hereby amends the above referenced Lease Agreement so as to provide an additional option to extend the term of the lease.

The last sentence of the paragraph titled "Lease Term" shall be amended to read as follows: "Lessee shall have the option to extend this lease for two consecutive additional five-year terms by giving Lessor 180 days written notice prior to the expiration of the then current term."

The execution of this Amendment letter shall indicate acceptance of its terms and conditions.

Please return all executed originals for further processing; an original will be returned to you once the process is completed.

Sincerely,

Marcus D. Jones
City Manager

ATTEST:

_____
City Clerk

Philly D, L.L.C.

_____
Name and Title:

Approved as to Form & Correctness:

810 Union Street, #1101 • Norfolk, VA 23510
Phone: 757-664-4242 • Fax: 757-664-4239

Lease Agreement

THIS LEASE AGREEMENT made this 19th day of August, 2003, by and between the **City of Norfolk** (Lessor), a municipal corporation of the Commonwealth of Virginia, and **Philly D, L.L.C.** (Lessee).

WITNESSETH THAT:

PREMISES. Lessor, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, to be paid, kept and performed by Lessee, does hereby demise and lease unto Lessee, and Lessee does hereby lease from Lessor, the property owned by the City of Norfolk known as 204 Main Street in Norfolk, Virginia, hereinafter referred to as "Premises". Premises consist of approximately 2875 square feet, as shown in Exhibit A.

USE. Lessee covenants and agrees to use and occupy Premises as a restaurant.

LEASE TERM. This lease agreement is for a 10-year term (Term) beginning on January 1, 2004 (Commencement Date) and ending on December 31, 2013 (Termination Date), subject to the default provisions of paragraph 22. Lessee shall have the option to extend this lease an additional five years by giving Lessor 180 days written notice.

1. BASE RENT: Lessee agrees to pay Lessor as rent for the Premises a guaranteed minimum annual Base Rent of Thirty Four Thousand Five Hundred Dollars and 00/100 ($34,500.00). The rent shall be paid in monthly installments, together with such amounts due for Additional Rent, made promptly on the first day of each month during the term of this lease without demand and without offset or deduction. The monthly installments of the Base Rent will be in the amount of Two Thousand Eight Hundred Seventy Five Dollars and 00/100 ($2,875.00) for year one and increase by four percent (3%) for each year thereafter. No payment by Lessee or receipt by Lessor of a lesser amount than the monthly installment stipulated in this lease shall be deemed other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of such rent, be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or pursue any other remedy provided in this lease. Base Rent for option period shall be 3% greater than last highest rate and increase by 3% per year.

2. PAST DUE RENT AND LATE CHARGES: Lessee hereby acknowledges that late payment by Lessee to Lessor of rent or other sums due hereunder will cause Lessor 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 which may be imposed upon by Lessor by terms of any mortgage or deed of trust covering the Premises or Shopping Center. In such event that Lessee shall fail to pay, when the same is due and payable, any Base Rent, Additional Rent charges or adjustments or Percentage Rent, and if said sums have not been paid within ten (10) days of their due date, then Lessee shall pay to

Lessor a "Late Charge" of One Hundred Dollars ($100.00) or two percent (2%) of the amount due on all rents, whichever is greater. Lessee further covenants and agrees to pay Lessor as a "bad check" or returned check charge the amount of Fifty-five Dollars ($50.00) per bad check.

3. NO JOINT VENTURE: It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

4. UTILITIES: Lessee shall promptly pay for all charges when due for water and sewerage, gas and electricity and other utility charges and utility taxes in connection with the use of the Premises.

5. NO ASSIGNMENT OR SUBLEASE: Lessee 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 Lessor in each instance. The transfer of fifty percent (50%) or more of Lessee's stock, if Lessee is a corporation, or the transfer of twenty-five percent (25%) or more partnership interest in Lessee, if Lessee is a partnership, or the dissolution of Lessee 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 Lessor. Lessee and any guarantors shall remain liable for the Lease, its terms and covenants in such event that the Lessor does grant consent to an assignment or sublease, and shall guarantee the performance of the assignee or subLessee without the need for guarantor's signature or consent thereto.

In determining whether to grant consent to the Lessee's sublet or assignment request, the Lessor may consider any reasonable factor. Lessor and Lessee agree that any of the following factors may be considered in deciding the Lessee's request:

(a) The financial strength of the proposed assignee/sublessee, which must be at least equal to that of the existing Lessee;

(b) Use of the Premises by the proposed assignee/sublessee, which must be similar to the use permitted by this Lease, as set forth herein.

(c) Business reputation of the proposed assignee/sublessee, which must be in accordance with generally acceptable business standards;

(d) Managerial and operational skills of the proposed assignee/sublessee, which must be equal to or greater than those of the existing Lessee;

(e) Percentage rents expected from the proposed assignee/sublessee, or the prospect of percentage rents, which must be at least equal to that of the existing Lessee;

(f) Use of the Premises such that it will not violate any other agreements or covenants affecting the Premises; and

(g) Use of the Premises by the proposed assignee/sublessee such that it will not violate or create any potential violation of any laws.

If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than the Lessee, without the prior written consent of the Lessor, the Lessor is permitted to collect rent from the assignee, subLessee or occupant and 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 paragraph. The acceptance of the assignee, subLessee or occupant as Lessee does not constitute a release of the performance of the covenants required to be performed by Lessee. In such event that the Lessee assigns its leasehold interest or sublet the Leased Premise for rents in excess of those rents reserved herein, Lessee shall pay all such excess rent to Lessor as Additional Rent. Lessee shall also reimburse Lessor for any attorney or other professional fees, which might be incurred or connected with such transfer or assignment.

6. CONTINUOUS OPERATION: As a material inducement to the Lessor to enter into this Lease, Lessee agrees to open the Premises for business on the Commencement Date and to keep the Premises open for business thereafter. Lessee shall continuously use the Premises for the purpose stated in the Lease Use Clause Article during the Term of this Lease, carrying on therein Lessees business undertaking diligently. Lessee shall keep the Premises open and available for business activity therein, during such days and hours as are customary in downtown Norfolk except when prevented by strikes, fire, casualty or other causes beyond the Lessee's control.

7. LESSEE INDEMNIFICATION AND LESSEE INSURANCE: Lessee agrees that it will hold harmless Lessor and Agent from any and all injury or damage to person or property in, on or about the Premises, including, without limitation, all costs, expense, claims or law suits arising in connection therewith. Lessee covenants that it will, at all times during the Term of the Lease and at its own cost and expense, carry public liability insurance on the Premises, with limits of not less than $1,000,000.00 each occurrence, $2,000,000.00 aggregate and $50,000.00 fire legal liability. Lessee further covenants that it will, at all times during the Lease Term and at is own cost and expense, carry insurance against damage by fire or other perils in an amount equal to the replacement value thereof on Lessee's inventory, furniture, fixtures and equipment and all parts of the Premises for which the Lessee is responsible as defined in paragraph 18. The same shall also include plate glass insurance, providing full coverage for replacement of the destroyed or damaged plate glass in or on the Premises. Each insurance policy shall be so written as to protect the Lessor, its Agent and the Lessee, as their respective interests may appear, and the originals of each and all such policies of insurance, or duplicates thereof issued by the insurance company, also known as Insurance Certificates, shall be delivered to the Lessor or to its Agent. The Insurance Certificate shall also acknowledge the hold harmless and waiver of subrogation, as described in paragraph 20 herein. If Lessee fails to provide such insurance, Lessor may terminate this lease with ten (10) days notice to Lessee.

8. ACCEPTANCE OF PREMISES: Lessee hereby agrees to accept the Premises from the Lessor as they are found by Lessee on the date that Lessee takes possession for fixturing in "what is, as is and where is" condition, unless the Premises condition found "as is" is to be modified,

altered or changed by Lessor, per Lessee's request and reduced to writing and made part of this Lease. After Lessee opens for business in the Premises, it shall have no legal or equitable remedy based either upon a claim that Lessor 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.

9. ESTOPPEL CERTIFICATE: Lessee shall, from time to time and within ten (10) days after request therefore by the Lessor, execute, acknowledge and deliver to the Lessor or its Agent a written Estoppel Certificate in recordable form. The Estoppel Certificate shall certify to the Lessor, its Mortgagee or other party designated by the Lessor, as of the date of such Estoppel Certificate that (a) the Lessee is in possession of 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 same Lease and that date upon which the Lessee 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 Lessor, or any duty or obligation of the Lessee, hereunder, and if so, specify the same in detail; and (e) that the Lessee has no knowledge of any event having occurred that will authorize the termination of this Lease by the Lessee, or that the Lessee has no knowledge of any uncured defaults on the part of the Lessor under this Lease, or if the Lessee has such knowledge, specifying the same in detail. In the event that the Lessee does not execute and deliver such Estoppel Certificate, as required herein, then this Article 16, for purposes of this Lease, shall be and shall constitute an Irrevocable Power of Attorney, appointing and designating the Lessor, its successors and assignees, as the Lessee's attorney-in-fact to execute and deliver such Estoppel Certificates as herein provided.

10. SUBORDINATION AND ATTORNMENT: Lessee 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 Premises have been built or upon any building hereafter placed upon the land, of which the Premises are a part. Lessee will, further, attorn to and acknowledge the foreclosure purchaser or purchasers as the Lessor hereunder. This shall be self-operative and no further instrument of subordination shall be required by any mortgagee. However, Lessee shall, upon the request of any party in interest, promptly execute such instrument or certificate to carry out the intent thereof.

11. QUIET ENJOYMENT: Lessor hereby covenants that Lessee, 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 hereinunder, shall have and quietly enjoy the Premises for the Lease Term set forth herein.

12. LESSOR MAINTENANCE: Lessor covenants that it will, at its own cost and expense and with reasonable dispatch after being notified in writing by Lessee of the need therefore, make such repairs to the Common Areas, outside utility lines and exterior of the Premises, including the foundation, roof, gutters, down spouts and outside walls, but excepting all storefronts and glass and doors, as may be necessary to keep the same in a good, workmanlike condition of repair.

13. ROOF: Lessee agrees that it will not cut the roof, drive nails into or place any debris on the roof of the building of which the Premises constitute a part. Any roof alterations or repairs necessitated by Lessee's requirements (i.e. stove vents, antennae, etc.) shall be done at Lessee's expense and authorized only by Lessor's written permission and under Lessor supervision, or performed by or supervised by a roofing contractor approved by Lessor in writing. Lessee shall also pay to Lessor on demand the cost incurred by Lessor of roof repair or roof re-seal, when Lessee is a prime cause for the need to repair or re-seal, as for example, the removal of a hood vent and the necessary reseal when a restaurant has now closed and may be relet as a retail store.

14. LESSEE MAINTENANCE: Lessee covenants that it will, during the Term hereof, and at its own cost and expense, maintain and upkeep the interior of the 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 Lessee'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. Lessee understands and agrees that it is also responsible for any condensation in and/or around the HVAC system and its ductwork.

Near the end of its tenancy and upon the written request of the Lessor, Lessee shall forward copies of all inspection and service reports by its HVAC contractor to the Lessor or its Agent, stating in detail the condition of the HVAC system. Any necessary repairs or replacements indicated by such report, in order to place the system in a good, workmanlike condition shall be made by Lessor at Lessor's expense.

15. ADDITIONAL LESSEE COVENANTS:

(a) Lessee shall not make alterations, additions or improvements to the building structure of which the Premises are a part without first obtaining Lessor's written approval and consent. For purposes of this Lease, the structural components of the Shopping Center building are hereby defined as the foundation, structural steel, roof, exterior walls, storefront components including storefront 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. Lessee shall present to Lessor plans and specifications for any such work at the time approval is sought from Lessor for Lessee structural modifications.

(b) Lessee has the right to install its store trade fixtures in the 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 Premises are a part. Such installations shall be at the sole risk and at the expense of the Lessee. All fixtures installed by Lessee shall remain the property of Lessee, and if the Lessee is not in default of the Lease, its terms and covenants herein, the same fixtures shall be removed by Lessee at the expense of the Lessee at the end of the Lease Term. Lessee further agrees to repair and/or to reimburse Lessor for the cost of repair for any damages to the Premises caused by the installation and removal of its trade fixtures. In the event that fixtures are left behind or abandoned, Lessee shall pay to Lessor any expenses associated with repairs to the Premises caused by the removal of same fixtures.

(c) Design of storefront signage and fabrication and installation of the same shall be approved by the Lessor or its Agent in writing prior to sign installation by Lessee at Lessee's expense. Lessee's sign installation is required to be completed and in place within sixty (60) days after Lessee opens the Premises for business. Failure to do so within the sixty (60) day time limit shall be regarded as a nonmonetary default of this Lease covenant. Lessee signage is subject to and shall be within the Sign Criteria established by the City of Norfolk Department of Neighborhood & Leisure Services. Lessee further agrees to maintain such storefront signage, awning signs, canopy signs, show window lettering, door signs or additional similar advertising signs in a good condition of repair and attractive display at all times.

Signs installed by Lessee are the property of Lessee, and if Lessee is not in default hereunder, shall also be removed by Lessee at the end of the Lease Term at Lessee's expense. Signs that are left behind or abandoned become the property of the Lessor. If Lessee abandons sign upon termination or sooner of the Lease, Lessor shall have the right to remove the sign from the canopy of the Shopping Center and Lessee agrees to be responsible and liable for the cost of such removal and the cost of such repairs to the canopy occasioned by same removal. Expenses associated with Lessor removal of same signs are subject to deduction from Lessee's Security Deposit.

(d) Lessee will not use nor permit the Premises to be used for any illegal or immoral purpose. Lessee hereby agrees to comply with all Federal, State and Municipal laws, ordinances and regulations as they relate to Lessee's business and/or to the Premises in which the Lessee's business is located, and the use, storage and disposal of hazardous substances.

(e) Lessee 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 Lessees, and all other Premises and Common Areas within the Shopping Center shall be free from noise or aromas which originate from Lessee's Premises.

(f) Lessee shall store all trash, rubbish and garbage in fully closed containers at the rear of the Premises and Lessee shall pay all costs incidental to the removal thereof, unless Lessee is part of a common trash removal service provided by the Lessor or its Agent and subject to CAM reimbursement. Lessee shall not burn or otherwise dispose of any trash, waste, rubbish or garbage in and or about the Premises. Any expenses incurred by Lessor related to the removal of the same shall be reimbursed by Lessee.

(g) Lessee covenants that it will, at its own expense, take such steps as shall be necessary to keep the Leased Premised free of termites, rodents, insects and other pests and that it will save Lessor harmless from any damage caused thereby. This obligation shall extend to any neighboring Premises, should Lessee's use of its Premises, i.e. restaurant, pet store, etc., be the predominant and likely cause of same problems in the neighbor Premises. Any expense incurred by Lessor in the removal or extermination of the same shall be reimbursed to Lessor by Lessee.

(h) Lessee 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 Shopping Center buildings or cause the buildings to become uninsurable. Lessee covenants that, without prior written consent of the Lessor, Lessee will not do anything, which will increase the rate of fire insurance premium

on the building. If by reason of any use by Lessee of the Premises or the keeping by Lessee of any flammable substances in the Premises, the hazardous insurance premiums or policies maintained by Lessor shall be increased over normal rates for retail stores in the Shopping Center, the amount of the increase in the Lessor insurance premium shall be paid to Lessor by Lessee from time to time on demand. Lessee hereby covenants that it shall cease and desist any activity so affecting the insurability of the Shopping Center upon written demand of the Lessor.

(i) Lessee 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 Lessor.

(j) Lessee shall not hold any fire, bankruptcy, and going-out of business or auction sales, without the prior written consent of the Lessor.

(k) Lessee 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 Lessor's consent in writing.

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

(m)Lessee is hereby responsible and liable for any freezing in pipes and/or within plumbing fixtures and shall pay for the damages incurred. Lessee shall keep the Premises at a sufficient temperature to prevent such freezing or make such arrangements with the local Utility to prevent freeze-ups.

16. LESSOR INSPECTION AND ACCESS: Lessor 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 Lessees of the Premises; and to make such repairs, alterations, improvements or additions as Lessor may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary, Lessor 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 Lessor deems appropriate, without rendering Lessor liable therefore. Otherwise, all such work and installation shall be done, so far as practical, so as not to unreasonably interfere with Lessee's use of the Premises. Lessee also hereby grants unto Lessor 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 storefront glass or front walls of said Premises. The exercise of any of these reserved rights by Lessor shall not be deemed as an eviction or disturbance of Lessee's use, possession and quiet enjoyment of the Premises, and shall never render Lessor liable in any manner to Lessee or any other person.

17. WAIVER OF SUBROGATION: Lessee hereby releases Lessor from liability and waives all rights of recovery against Lessor for any loss in or about the Premises, from perils insured against and under the fire insurance contract, including any all risk endorsements thereof,

whether due to negligence or any other cause. This release of liability shall be operative only as long as waiver of subrogation clauses are available on insurance policies, in the amounts, form, kinds and with a company satisfactory to Lessor mortgagee or to mortgagee, as Lessor, in the event of foreclosure.

18. INDEMNITY AGAINST LIENS: Lessee agrees that it will, at all times during the Term of this Lease, take any and all steps necessary to prevent the filing of mechanics liens against the Premises. Lessee further agrees to indemnify and save the Lessor harmless from and against any and all liabilities incurred by Lessee or claimed or charged against the Premises. Lessee shall promptly pay, or otherwise discharge, any and all such claims, expenses and liens, including the mechanic's material men's and other laborer's liens asserted or claimed against the Premises or any part thereof. In no event shall Lessor or any of the Lessor's property be liable for or chargeable with any expense or lien for work, labor or materials used for and in the Premises; or for any improvements thereof or changes made upon the order of Lessee, or to discharge the obligations of the Lessee.

19. FIRE AND/OR DESTRUCTION: If the Premises shall be damaged by fire or other casualty during the Term hereof, Lessor 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 Lessor's insurance permit and, further provided that, Lessor's mortgagee does not require insurance proceeds to be paid to it. Once Lessor restoration work is complete, and since time is of the essence, Lessee's rent payment shall re-commence on the thirtieth (30th) day after Lessor notifies Lessee in writing that the Premises are ready for fixturing. The Lessee shall be responsible, at its sole cost and expense, to repair or replace any and all of the Lessee'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 Lessee, during the period of time intervening between the date of such fire and/or destruction and the date that the Premises are restored. However, if the damage is due to the fault or the negligence of the Lessee 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 Premises at the time of such destruction occurs, Lessor, at its option, may terminate this Lease as of the date of such destruction by giving Lessee 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 Lessee shall remove all its property from the Premises within thirty (30) days after the receipt of written notice of termination. Unless Lessor gives such notice, this Lease shall remain in full force and effect and Lessor shall repair such damage as its expense, as expeditiously as possible under the circumstances.

20. 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 Lessee from this Lease nor to excuse Lessee, nor shall Lessee in any event be excused from prompt payment of Base Rent, Percentage Rent, Additional Rent, Additional Rent adjustments and all other charges due Lessor by Lessee.

21. LESSEE DEFAULT: The occurrence of any one of the following events constitutes a default by the Lessee and a breach of this Lease and its covenants by the Lessee, if such default, breach or non performance is continued and not cured within five (5) days after written notice from Lessor: (a) The vacating or abandonment of the Premises by Lessee, or the failure of the Lessee to be open for business and for the conduct of business as described in the Use Clause Article found in the Lease Agreement, (b) The failure by Lessee to make any payment of Base Rent, Percentage Rent, Additional Rent and Additional Rent Charges and adjustments on or before the due date thereof, (c) The failure by Lessee to perform any covenants herein or the breach by Lessee of any Lease covenants herein, other than those described in sections (a) and (b) of this Article 22, and the further failure by Lessee 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) Petition by Lessee for bankruptcy, insolvency, or general assignment for the benefit of its creditors, or receiver appointment for Lessee for the substantial part of its assets and properties and such receiver is not removed with five (5) days after its appointment, (e) If the Lessee shall default as described in this Article 22, 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 Lessee Default which cannot be cured, notwithstanding provisions for cure provided in this Lease. Upon such default, the Lessor may proceed, with five days notice but no opportunity for cure, to exercise its remedies upon default.

22. LESSOR REMEDIES: In the event of Lessee Default, including Lessee's abandonment or vacating the Premises, Lessor shall have the right, in addition to all other rights and remedies provided by the law, 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 Lessee for damage arising therefrom and without obligation to Lessee to store any merchandise and property. Any costs of removal and storage of Lessee's fixtures, inventory, equipment or any other personal property shall be the expense of Lessee and shall be added to all sums owed by Lessee to Lessor. Further, Lessor is under no obligation to Lessee, after default or abandonment, to relet the Premises in the name of Lessee or for the benefit of the Lessor. Lessor may, at its option and without subsequent notice to Lessee, re-let the Premises for such term and on such covenants and purposes as Lessor, in its sole discretion, may determine are in the best interest of the Lessor. Lessor 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 Lessee in default. The Lessee in default shall remain liable for any deficiency. Further, Lessor 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 Lessor's recovery of possession of the Premises by any means shall not relieve the Lessee 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 Lessee then occupies the Premises.

Acceptance by Lessor of delinquent rent from Lessee after Lessee default shall not cure such default or entitle Lessee to possession of the Premises. Lessee hereby expressly waives any and all rights of redemption, if any, granted by and under any present or future law, in the event that Lessee shall be evicted or dispossessed for any cause in default or in the event that the Lessor obtains possession of the Premises by virtue of the remedies outlined in this Lease, or otherwise. The receipt by Lessor 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 Lessor of any covenant hereof shall be deemed to have been agreed upon, unless explicitly reduced to written agreement and signed by Lessor and Lessee.

All remedies of Lessor shall be cumulative.

23. ATTORNEYS' FEES: Lessee hereby agrees to pay all costs incurred by the Lessor on account of the Lessee's default, including but not limited to collection costs, court costs and attorney fees in an amount equal to twenty-five percent (25%) of any money owed at the time and accruing after Lessor requests the assistance of an attorney. If Lessee's default is a non-monetary default, Lessee shall pay Lessor's actual attorneys' fees or $250.00, whichever is greater, notwithstanding any cure of said default.

24. HOLDOVER AND SUCCESSIVE LESSEE: If Lessee shall be in possession of the Premises after the established Termination Date of the Lease, and in the absence of any written agreement extending the term hereof, the tenancy of this Lease shall become one from month-to-month, to be terminated by either Lessee or Lessor on thirty (30) days written notice. Lessee shall pay the rent for the thirty (30) days following notice.

Lessee acknowledges that possession of the Premises must be surrendered to Lessor on the Termination Date or sooner. Lessee agrees to indemnify and save Lessor harmless from any and all costs, claims, loss or liability resulting from delay by Lessee in so surrendering the Premises, including, without limitation, any claims made by a succeeding Lessee founded on such delay. The parties hereto recognize and agree that the damage to the Lessor resulting from any failure to timely surrender possession will be extremely substantial, will exceed the Base Rent, Additional Rent charges and Percentage Rent payable hereunder, and will be impossible to measure accurately. Lessee therefore agrees that if possession of the Lease Premises is not surrendered to Lessor within twenty-four (24) hours after the Termination Date or sooner, then the Lessee shall pay to Lessor for each month and for any portion of a month during which the Lessee holds over in the Premises a sum equal to two (2) times the aggregate of Base Rent plus Additional Rent charges which are payable under this Lease during the last month of the term hereof, in addition to the Lessor's actual damage incurred by Lessee's failure to surrender which exceeds such rent. Nothing herein contained shall be deemed to permit Lessee to retain possession of the Premises after the termination of the Lease Term, unless specifically agreed to in writing. The provisions of this Article shall survive the expiration or said sooner termination of Lease Term.

25. TERMINATION AND SURRENDER: Upon the expiration or termination of this Lease, Lessee shall surrender the Premises to Lessor in as good as condition as they were found upon the Lessee 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 Lessee's control. Lessee shall deliver to Lessor 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 13, 15(b) and 15(c) found in this Lease. After Lessee vacating or Lessee abandonment, Lessor may elect to retain or dispose of, in any manner, Lessee alterations and improvements or Lessee's personal property that Lessee does not remove from the Premises before or after the Termination Date of the Term. Title to any such Lessee alterations or Lessees personal property, that Lessor elects to retain or dispose of after the Term, shall vest to and in the Lessor. Lessee waives all claims against Lessor for any damage to Lessee resulting from Lessor's retention or disposition of any such alterations or personal property. Lessee is further liable to Lessor for Lessor's expenses and costs for removing and disposing of any Lessee alterations or Lessee personal property, which Lessor does not elect to acquire.

26. LESSEE WAIVERS: The failure of Lessor to insist, in any one or more instances, to strict performance by Lessee as to any Lease covenants shall, not be construed as a waiver by Lessor or relinquishment, in the future, of such covenants, but the same shall continue and remain in full force and effect. The receipt by Lessor 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 Lessor of any provision hereof shall be deemed to have been agreed upon unless expressed in writing and signed by the parties hereto.

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

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

28. SUCCESSORS AND ASSIGNS: All the terms, covenants and agreements of this Lease shall extend to and be binding upon the Lessor and be binding upon the Lessee and its respective heirs, administrators, executors, successors, assignees, subLessees, 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.

29. NOTICES: Any notice herein provided for to be given to Lessor shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid, addressed to:

LESSOR'S NOTICE ADDRESS:
City of Norfolk
Facility and Enterprise Management
City Hall Bldg. – Room 306
810 Union Street
Norfolk, Virginia 23510

LESSEE'S NOTICE ADDRESS:
201 E. Plume Street
Norfolk, Virginia 23510
Attn: Peter G. Decker

Any notice herein provided for to be given to Lessee shall be deemed to be given if and when posted in United States registered or certified mail, postage prepaid.

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.

30. 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.

31. LEASEHOLD TAXES: Lessee will be responsible for the payment of all leasehold taxes levied on Premises.

32. SEVERABILITY: In the event that any provision herein is unlawful, or otherwise unenforceable, it shall be severed and deemed null and void ab initio and shall not impair the validity of the remaining provisions of this lease.

33. RIGHT OF ENTRY: City hereby grants Lessee the right to enter into the Premises upon effective date of the City ordinance granting approval of this Lease. Right of entry will be for the purpose of building out Premises in conjunction with the intended use. Prior to entering Premises, Lessee will deliver to the City the Insurance Certificates as required in Section 7.

IN WITNESS WHEREOF, the parties have caused this lease agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

THE CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

PHILLY D, L.L.C.

By: _____

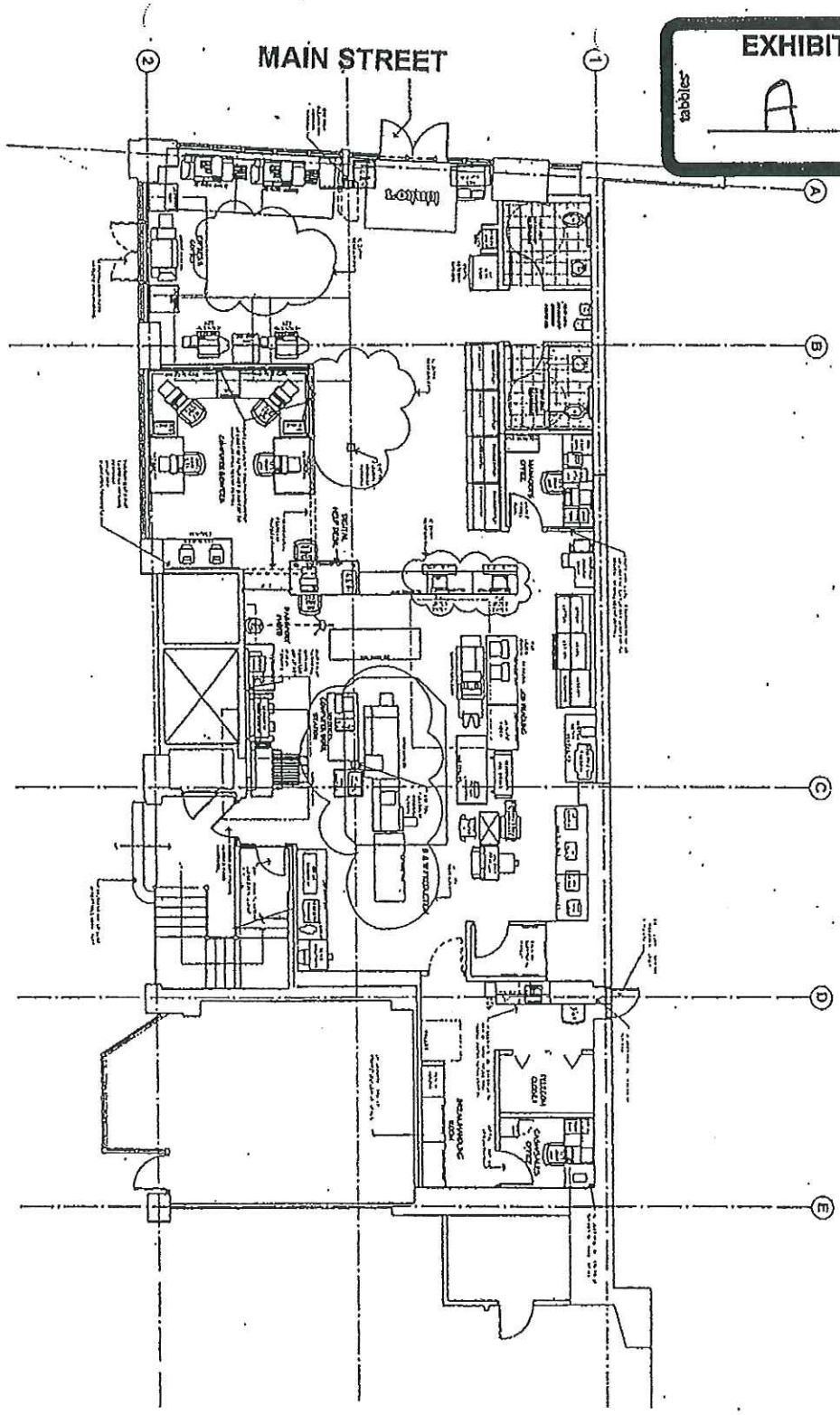
Title: PRESIDENT

APPROVED AS TO CONTENTS:

_____
Director of Facility and Enterprise Management

APPROVED AS TO FORM AND CORRECTNESS:

_____
Assistant City Attorney



SELDEN ARCADE

SHEET TITLE SPACE PLAN	PROJECT NORFOLK, VA DOWNTOWN 204 MAIN STREET NORFOLK, VA 23510
ID - 2	PRELIMINARY