C: Dir., Norfolk Public Libraries

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

February 11, 2014

From: Sonal Rastogi, Director of Libraries

Subject: Authorization to Accept Bids for a 6-year Lease for Property Located at 235 East Plume Street

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

Ward/Superward:

Approved: Marcus D. Jones, City Manager

Item Number: IB-1

I. **Recommendation:** Accept Bids and Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description**

This agenda item is an Ordinance to authorize entering into a Six (6) year Lease Agreement, which will allow the successful bidder to occupy 235 East Plume Street, subject to the City's completion of improvements on the Property.

IV. **Analysis**

Pursuant to section 15.2-2100 of the Virginia Code, before granting any lease term in excess of five years, the City must first advertise and publically receive bids. The City will invite bids for a long term lease, such lease to be granted for a term of six (6) years. This Ordinance accepts the highest bid from a responsible bidder after careful consideration of all bids submitted, and to grant the Lease as advertised, subject to the City of Norfolk's completion of improvements on the Property.

V. **Financial Impact**

Annual rent shall be paid to the City of Norfolk beginning on the Rent Commencement Date as defined in the Ordinance.

VI. **Environmental**

There are no known environmental issues associated with the lease agreement.

VII. **Community Outreach/Notification**

In accordance with the Norfolk City Charter and Virginia State law, legal notice was posted in *The Virginian-Pilot*. In addition, public notification for this agenda item was conducted 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 letter has been coordinated with the Norfolk Public Libraries and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Invitation for Bid

1/16/2014-km

Form and Correctness Approved:

By Martha P. McBunn
Office of the City Attorney

Contents Approved:

By Sonal Rastogi
DEPT. City Manager

NORFOLK, VIRGINIA

ORDINANCE No.

IB-1

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY _____ FOR A LONG TERM DEED OF LEASE, WITH A TERM OF SIX YEARS, FOR THE PROPERTY LOCATED AT 235 EAST PLUME STREET.

- - -

WHEREAS, pursuant to the provisions of Section 15.2-2100, et seq., of the Code of Virginia, 1950, as amended, the City of Norfolk has invited bids for a long term lease with a term of six years, subject to certain terms and conditions, for the property located at 235 East Plume Street; and

WHEREAS, the requirements of Sections 15.2-2101 and 15.2-2102 of the Code of Virginia, 1950, as amended, have been met and the Council has carefully considered all bids submitted; now, therefore,

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

Section 1:- That _____, being the highest responsible bidder, its bid for a long term lease, with a term of six years, in accordance with the terms and conditions set forth in Exhibit A attached hereto, for the benefit of the tenants of the building located at 235 East Plume Street, is hereby accepted.

Section 2:- That pursuant to Section 15.2-2104 of the Code of Virginia, 1950, as amended, the Council has determined that a bond in the sum of $0 shall be executed in favor of the City of Norfolk.

Section 3:- That the City Manager is authorized to execute a lease, containing the terms and conditions set forth in Exhibit A, on behalf of the City of Norfolk and to do all things necessary and proper to carry out its terms.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

EXHIBIT A

1. **PREMISES.**

That for and in consideration of the terms, conditions, covenants, promises and agreements herein made, Landlord leases to Tenant certain real property located in the City of Norfolk, Virginia and the building (the "Building") and other improvements located thereon, as further described on Exhibit A attached hereto and incorporated herein by this reference, together with full rights of ingress and egress (the "Premises").

2. **USE OF PREMISES.**

The Premises are to be used and occupied by Tenant to house and operating a central library facility for the City of Norfolk, Virginia and, at Tenant's election, for retail operations. The Tenant agrees not to use the Premises for any purposes other than as specifically mentioned herein, and the Tenant agrees not to use the Premises for any unlawful purpose.

3. **TERM.**

(a) The term of this Lease (the "Term") shall be for six (6) years plus any Initial Partial Month Days (as hereinafter defined) and shall commence on the Effective Date and shall end on the date which is six (6) years plus the number of Initial Partial Month Days (as hereinafter defined) following the Effective Date. If the Effective Date does not occur on the first day of a month, the number of days from the Effective Date to the last day of the month in which the Effective Date occurs shall be referred to as the "Initial Partial Month Days".

(b) Landlord warrants that Landlord alone, at the time this Lease is executed, has the right to lease the Premises, without the consent of any other party. It is expressly understood and agreed that this covenant by the Landlord constitutes a warrant. If Landlord does not have this right, then Tenant, in addition to any other remedy available at law or in equity, may immediately declare this Lease null and void from its inception and of no force and effect, without notice. In such event, no rent shall accrue or be deemed to have accrued for the term of this Lease, or for any part of the term.

4. **RENT.**

(a) Landlord grants Tenant a build-out period free of rent and rent related charges (i.e. late charges or default interest) for the period commencing on the Effective Date and ending on the date that the Improvements (as hereinafter defined) have been "substantially completed" in accordance with the terms of the Work Letter attached hereto as Exhibit C-1 (the "Rent Commencement Date").

(b) Commencing on the Rent Commencement Date, Tenant covenants to pay to Landlord annual base rental ("Base Rent") in the amount of Forty Five Thousand and 00/100 Dollars ($45,000). The Base Rent shall be payable in arrears on January 1st of each Lease Year (as hereinafter defined), without any demand, offset, or reduction whatsoever, and without notice.

(c) The first "Lease Year" shall commence on the first full month following the Rent Commencement Date, and shall include part of the previous month if applicable, and shall end at the close of the twelfth (12th) full calendar month following the Rent Commencement Date. Thereafter, each Lease Year shall consist of successive periods of twelve (12) calendar months.

(d) Upon request of either party, Landlord, Tenant shall execute a Certificate of Rent Commencement, in the form attached hereto as Exhibit B and incorporated herein by reference (the "Declaration"). Tenant's failure to execute the Declaration shall not affect the Rent Commencement Date or the Term, or the Expiration Date, as same are determined by the terms of this Lease.

(e) As used herein "additional Rent" shall mean all additional charges or sums due hereunder and "Rent" shall include Base Rent and all additional Rent due hereunder.

(f) The payment of all Rent shall be made payable to the City of Norfolk, Virginia, and mailed to the Director of Finance, 810 Union Street, Suite 600, Norfolk, Virginia 23510, or to other address as Landlord may designate from time to time by written notice to Tenant.

(g) This Lease is what is commonly called a "Full Service Lease." The Landlord shall be responsible during the Term (including any renewal period, if any) to perform any services or for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the Premises, or the use and occupancy thereof by Tenant, or the contents thereof, or the business carried on therein; provided, however, the Tenant shall pay, as additional Rent, all charges, expenses, costs and outlays of every nature and kind relating to the Premises expressly set out in this Lease to be paid by Tenant.

(h) No security deposit shall be required.

(i) Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and 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 which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Base Rent, or additional Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (15) days after paid amount is due then Tenant shall immediately pay to Landlord a late charge equal to ten percent

(10%) of such overdue amount or the sum of One Hundred Dollars ($100.00), whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of late payment by Tenant and is in addition to interest due under Section 19 below. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, or prevent Landlord from exercising any of the rights and remedies granted hereunder.

5. **POSSESSION AND CONDITION OF PREMISES.**

(a) Landlord shall deliver quiet possession of the Premises to Tenant on the Effective Date and shall provide quiet enjoyment of the Premises to Tenant during the Term and any applicable renewals or extensions thereof.

(b) On the Commencement Date, Landlord shall deliver the Premises to Tenant in good repair and in a condition suitable to the use for which it is leased.

(c) The Tenant will allow the Landlord, or its authorized agents, to enter the Premises for purposes of inspection or as required by the Landlord.

6. **MAINTENANCE.**

(a) Tenant shall take the Premises "as is" for the Term and any extension or renewal term and Landlord shall have no obligation to make any improvements or alterations to the Premises.

(b) It shall be the sole responsibility and obligation of Landlord, with no cost to Tenant, to keep or cause to be kept the Premises, including, without limitation, (i) foundations, (ii) roof, (iii) Building heating ventilation and air condition (HVAC) system, (iv) utility lines providing service to the Building or the Premises, (v) structural portions or the walls of the Building, and (vi) parking areas, driveways, sidewalks, fences, landscaped areas and other common areas in good order, repair and condition, ordinary wear and tear excepted and except for damage thereto due to the acts or omissions of Landlord, its agents, employees, contractors or invitees the for which the repair costs are not reimbursed by insurance proceeds.

(c) Except for the obligations of Tenant under Section 8, Tenant shall not be obligated to make repairs, replacements or improvements of any kind upon or to the Premises, or to any equipment, facilities or fixtures therein, all of which shall be Landlord's responsibility.

7. **DAMAGE OR DESTRUCTION OF THE PREMISES.**

(a) If the Premises are damaged by fire, lightning, windstorm, tornado, earthquake, civil disturbance, flood, acts of nature or other casualty loss, and, in the reasonable opinion of Tenant or Landlord, the Premises are thereby rendered totally untenantable, this Lease shall immediately terminate, at the option of

Tenant or Landlord, upon written notice to other, such notice to be delivered within thirty (30) calendar days of such damage.

(b) If the Premises are damaged by fire or otherwise, but in the reasonable opinion of Tenant, the Premises are not rendered totally untenantable and unusable, to the extent the insurance proceeds paid to Tenant are sufficient to repair such damage, Landlord shall repair and restore the Premises as promptly as possible to their former condition, in which event there shall be a proportionate abatement of all Rent and other payments otherwise due to Landlord under the terms of this Lease, for the period during which the said repairs and restoration are being completed, for that portion of the Premises not substantially usable by Tenant during such period. If Landlord fails to make all repairs, replacement, restoration, or renovation as required in this subsection within a reasonable time after written notice to Landlord, then Tenant may terminate this Lease upon thirty (30) days prior written notice to Tenant.

8. **TENANT ALTERATIONS.**

(a) Tenant shall make, or cause to be made, initial improvements to the Premises in accordance with the provisions of Exhibits C-1 and C-2, which is attached hereto and made a part hereof by reference ("Improvements"). The total cost for the Improvements including, but not limited to design and engineering costs, cost to prepare plans and specifications, construction drawings, the actual construction and construction management shall be paid by Tenant.

(b) Tenant agrees that no alterations, installations, repairs or decorations shall be done or made without Landlord's consent, which consent may be withheld in Landlord's sole discretion.

(c) Any Tenant alterations, installations or improvements required or permitted to be made under this Lease must be completed in a good and workmanlike manner, with new first-class materials and equipment, and in conformity with all applicable federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted.

(d) Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to Tenant or any of its contractors or subcontractors in connection with the reconstruction, furnishing, repair, or operation of the Premises, and in all events will bond or cause to be bonded, with surety companies reasonably satisfactory to Landlord, or pay or cause to be paid in full forthwith, any mechanic's, materialmen's or other lien or encumbrance that arises, whether due to the actions of Tenant or any person under the control of Tenant, against the Premises. Tenant shall have the right to contest any such lien or encumbrance by appropriate proceedings which shall prevent the collection of or other realization upon such lien or encumbrance so contested, and the sale, forfeiture or loss of the Premises to satisfy the same, provided that such

contest shall not subject Landlord to the risk of any criminal liability or civil penalty, and provided further that Tenant shall give such reasonable security as may be requested by Landlord to insure payment of such lien or encumbrance and to prevent any sale or forfeiture of the Premises by reason of such nonpayment, and Tenant hereby indemnifies Landlord for any such liability or penalty. Upon the termination after final appeal of any proceeding relating to any amount contested pursuant to this Section, Tenant shall immediately pay any amount determined in such proceeding to be due, and in the event Tenant fails to make such payment, Landlord shall have the right after giving five (5) days notice to Tenant to make any such payment on behalf of Tenant and charge Tenant therefor.

9. **UTILITIES AND SERVICES; INSURANCE; TAXES.**

(a) Utilities and Other Services. Landlord shall provide, without charge, the following utilities and services for the Premises: heating and air-conditioning as conditions require, electricity, gas, water and sewer, pest control and telephone service to the Premises and Landlord shall promptly pay when due all fees and charges incurred in connection therewith.

(b) Insurance.

(i) Tenant's General Liability Insurance. Tenant hereby covenants and agrees at all times during the Term of this Lease to cause to be maintained, at Landlord's sole cost and expense, comprehensive general liability insurance against all claims for personal injury, death, or property damage occurring on the Premises with a combined single limit of liability of Two Million Dollars ($2,000,000.00) per person. Tenant shall furnish certificates of insurance evidencing payment thereof to Landlord as the same shall be requested in writing from time to time by Landlord. All such insurance policies shall name Landlord as an additional insured as its interest may appear and shall provide for not less than thirty (30) days' written notice to Landlord prior to any cancellation or material adverse amendment of such policy.

(ii) Tenant's Property Insurance. Tenant hereby covenants and agrees at all times during the Term of this Lease to cause to be maintained, at Landlord's sole cost and expense, causes of loss-special form property insurance at least as broad as ISO Special Form Causes of Loss, in an amount not less than the full insurable replacement value of the building and any and all other improvements on the Premises, against fire and such other risks as are, from time to time, included in standard "all risks" extended coverage insurance policies. Tenant shall furnish certificates of insurance evidencing payment thereof to Landlord as the same shall be requested in writing from time to time by Landlord. All such insurance policies shall name Landlord as an additional insured as its interest may appear and shall provide for not less than thirty (30) days' written notice to

Landlord prior to any cancellation or material adverse amendment of such policy.

(iii) Mutual Release Waiver of Subrogation. Landlord and Tenant mutually release and discharge each other (as well as the officers, directors, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure or other real or personal property of the other, or any resulting loss of income, that may arise from a fire or other casualty covered by insurance benefitting the party suffering such loss or damage or that was required to be covered by insurance (or self-insurance) under the terms of this Lease. The above releases also shall apply to any third party, including any insurance company, claiming through or under a party as a result of a right of subrogation. All casualty insurance policies required to be maintained under this Lease shall contain "waiver of subrogation" clauses to carry out these release provisions.

(iv) General Insurance Provisions. All insurance policies required under this Section shall be issued by insurance companies which have an **A-/VII** or better rating by Best's Insurance Rating Service, and are authorized and licensed to do business in the State where the Premises is located and shall be written on an "occurrence" basis form and not on a "claims made" form. All such policies may be maintained under a "blanket insurance policy" so long as the amount and coverage of insurance required be carried hereunder is not diminished. Any party required to provide insurance hereunder may cause said insurance to be provided by a parent or affiliate company.

10. **TAXES.**

(a) Tenant shall pay such real estate taxes as required by law and all utilities, storm water fees, and other fees and assessments which are applicable to the Premises.

(b) Tenant shall be solely responsible for the payment of all personal property taxes and assessments levied or charged against the Premises during the Term. Without limiting the foregoing, Tenant agrees to pay all taxes, assessments, fees or public charges assessed against, imposed or levied upon the trade fixtures, furnishings, equipment, inventory and all other personal property located within the Premises.

11. **ASSIGNMENT/SUBLEASE.**

Tenant may not assign this Lease in whole or in part or sublease all or any part of the Premises without Landlord's prior written consent, which consent may be denied, withheld, or conditioned in Landlord's sole discretion. No assignment of this Lease or subletting of the Premises shall be deemed to release Tenant from any of its obligations under this Lease, nor shall any consent by Landlord to an assignment or subletting be

construed as permitting any further assignment or subletting except in accordance with this Section.

12. **COVENANT AGAINST LIENS.**

If, because of any act or omission of Tenant, or others claiming by or through Tenant, any mechanic's liens or any other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, Tenant shall, at its own cost and expense, cause the same to be paid, discharged of record or bonded off within thirty (30) days after written notice from Landlord or Tenant of the filing thereof.

13. **CONDEMNATION.**

Landlord shall have the right to terminate this Lease if the Premises, or any part thereof, is condemned or sold in lieu of condemnation.

14. **COMPLIANCE WITH LAWS.**

Tenant shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of its obligations under this Lease.

15. **LANDLORD'S PASS THROUGH ELECTION.**

If Landlord has incurred eligible rehabilitation expenses in connection with the rehabilitation of the Premises in a manner that is intended to qualify for the Virginia historic rehabilitation tax credit described in Section 58.1-339.2 of the Code of Virginia, as amended, the Landlord and Tenant agree to treat the Tenant, and/or any tenant of the Tenant, as having incurred those eligible rehabilitation expenses pursuant to the provisions of the Virginia Department of Historic Resources Regulations Section 17 VAC 10-3-110(F).

16. **NO ENCUMBRANCES.**

Landlord covenants that it has good and marketable fee simple title to the Premises and that Landlord has full right and lawful authority to enter into this Lease in accordance with the terms hereof and to grant the estate demised hereby, and that no other party has any right, lease or option to or in connection with the Premises. Landlord covenants that it will not encumber the title of the Premises or cause or permit said title to be encumbered in any manner whatsoever after the date of this Lease without the consent of Tenant, and Tenant may reduce or discharge any such encumbrance or lien by payment or otherwise at any time after giving ten (10) days' written notice thereof to Landlord and recover or recoup all costs and expenses thereof from Landlord. Landlord further covenants that the Landlord has received no written notice and has no knowledge of the intention of any party holding an easement affecting the Property or any part thereof to expand the exercise of any such easement beyond the scope of the present exercise thereof (as by replacing, or expanding existing facilities, conduits (including underground

or overhead wires, cables or pipes) or systems for sewers, water, electric, gas, cable and other utilities).

17. **OFF-SET.**

Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall Tenant have any right to terminate this Lease, nor shall Tenant be entitled to any abatement or reduction of any Rent hereunder, nor shall the obligations of Tenant hereunder be affected, by reason of any default on the part of Landlord under this Lease, or under any other agreement to which Landlord and Tenant may be parties. It is the intention of the parties hereto that the obligations of Tenant hereunder shall be separate and independent covenants and agreements, that the Rent, and all other sums payable by Tenant hereunder shall continue to be payable in all events and that the obligations of Tenant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease. Nothing herein shall preclude Tenant from pursuing or realizing upon its other remedies at law or in equity by reason of any default hereunder by Landlord.

18. **NOTICES.**

(a) All notices to the Tenant required or permitted under this Lease shall be given in writing and shall be served by overnight delivery, by a nationally recognized overnight carrier (with notice deemed given on the next business day after delivery to the overnight carrier) or certified or registered mail, return receipt requested (with notice deemed given upon receipt), to the Tenant addressed to:

The Slover Library Foundation
810 Union Street
1109 City Hall Building
Norfolk, Virginia 23510

With a copy to:

Willcox and Savage, P.C.
Wells Fargo Center
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510
Attention: David A. Snouffer, Esquire

(b) All notices to the Landlord required or permitted under this Lease shall be given in writing and shall be served by overnight delivery, by a nationally recognized overnight carrier (with notice deemed given on the next business day after delivery to the overnight carrier) or certified or registered mail, return receipt requested (with notice deemed given upon receipt), to the Landlord addressed to:

City of Norfolk
Manager of Real Estate
City Hall
810 Union Street
3rd Floor
Norfolk, Virginia 23510

with a copy to: Bernard A. Pishko, City Attorney
City of Norfolk
810 Union Street
900 City Hall
Norfolk, Virginia 23510

(c) Each such notice shall be deemed to have been given to or served upon the party to which addressed on the date the same is received by the party or delivery is refused. Each party to this Lease shall notify the other party of a new address at which to mail notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if mailed to such party's address as specified in Section 18(a) or Section 18(b), as appropriate.

(d) Where notice is sent by an alternative method, the notice shall be effective if actually received by the party, or its appointed agent, to whom the notice is addressed.

19. **DEFAULT.**

(a) An "Event of Default" by Tenant shall be deemed to include, in addition to any other events specifically referenced in this Lease, the occurrence of any of the following:

(1) Tenant shall fail to pay any installment of the Rent (including additional Rent) within ten (10) days of the due date thereof.

(2) Tenant shall fail to comply with any term, provision or covenant of this Lease, and if such failure shall continue for more than thirty (30) days after written notice thereof to Tenant provided, however that if such Event of Default cannot reasonably be cured in such thirty (30) day period, then Tenant shall have such additional time as may reasonably be necessary to prosecute such cure, so long as Tenant commenced such cure within such thirty (30) day period and diligently pursues the completion of the cure thereafter.

(3) The Premises is vacated or abandoned by Tenant without the written consent of Landlord.

(b) In the event of an Event of Default or breach by Tenant, Landlord may, at any time hereunder, with or without notice or demand, without limiting Landlord in the exercise of any other right or remedy which Landlord may have hereunder or pursuant to applicable law by reason of such default or breach, proceed in the following manner:

Notwithstanding that Landlord prior to such breach or Event of Default shall have received Rent or any payment, however designated, for the use of the Premises from or on behalf of Tenant or from any other person and regardless of and notwithstanding the fact that Landlord has or may have some other remedy under this Lease or by virtue hereof, or by law or in equity, Landlord may, immediately or at any time after any of such breach or default give Tenant a notice of termination of this Lease, and, upon the giving of such notice, this Lease and the Term and estate hereby granted shall expire and terminate upon the day so specified in such notice as fully and completely and with the same force and effect as if the day so specified were the date hereinbefore fixed for the normal expiration of the Term and all rights of Tenant under this Lease shall expire and terminate, but Tenant shall remain liable for damages as hereinafter provided. Upon any such termination of this Lease, Tenant shall peaceably quit and surrender the Premises to Landlord, and Landlord may, without further notice, enter upon, re-enter, possess and repossess itself thereof, by force, summary proceeding, ejectment, unlawful detainer or otherwise, and may dispossess and remove Tenant and all other persons and property from the Premises, and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same. No re-entry by Landlord shall be deemed an acceptance of a surrender of this Lease.

It is covenanted and agreed by Tenant that in the event of the termination of this Lease or of re-entry by Landlord, under any of the provisions of this Section or pursuant to law by reason of default hereunder on the part of Tenant, Tenant will pay to Landlord, as damages, at the election of Landlord, either:

(i) an amount equal to the present value (as of the date of such termination) of the sum of Rent which would have been payable by Tenant for the period commencing with such termination of this Lease and ending with the date hereinabove set for the normal expiration of the Term hereby granted had this Lease not so terminated or had Landlord not so re-entered the Premises payable to Landlord in one lump sum on demand and shall bear interest at eighteen percent (18%) per annum until paid, provided however, that the payment of such interest shall in no event exceed the highest rate allowed under applicable law. For purposes of this clause "present value" shall be computed by discounting such amount at a discount rate then in effect at the United States Federal Reserve Bank in Richmond, Virginia; or

(ii) sums equal to the Rent which would have been payable by Tenant had this Lease not so terminated, payable upon the days specified herein following

such termination or such re-entry and until the date hereinabove set for the normal expiration of the Term, provided, however, that if Landlord shall re-let the Premises during said period (it being understood that Landlord has no obligation to do so), Landlord shall credit Tenant with the net rents, if any, received by Landlord from such re-letting, such rents to be determined by first deducting from the gross rents as and when received by Landlord from such re-letting, the expenses incurred or paid by Landlord in terminating this Lease or of re-entering the Premises and of securing possession thereof, as well as the expenses of re-letting, including altering and preparing the Premises for new tenants, brokers' commissions and all other expenses chargeable against the Premises and the rental therefrom; but in no event shall Tenant be entitled to receive any excess of such net rents over the sums otherwise payable by Tenant to Landlord hereunder.

Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term would have expired if it had not been terminated under the provisions of this paragraph, or under any provisions of law, or had Landlord not re-entered the Premises. Landlord shall also be entitled to such other remedies as may be available at law or in equity in the event of default by Tenant hereunder.

Landlord shall have all rights and remedies now or hereafter existing at law or in equity with respect to the enforcement of Tenant's obligations hereunder and the recovery of the Premises. No right or remedy herein conferred upon or reserved to Landlord shall be exclusive of any other right or remedy, but shall be cumulative and in addition to all other rights and remedies given hereunder or now or hereafter existing at law. Landlord shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any covenant, agreement, condition or provision of this Lease, or to a decree compelling performance of any covenant, agreement, condition or provision of this Lease. Nothing herein contained shall limit or prejudice the right of Landlord to exercise any or all rights and remedies available to Landlord by reason of default or to prove for and obtain in proceedings under any bankruptcy or insolvency laws, an amount equal to the maximum allowed by any law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damage referred to above.

(c) Except as may expressly be provided in this Lease to the contrary, any amount due to Landlord not paid when due shall bear interest at the rate of ten percent (10%) per annum, provided however, that the payment of such interest shall in no event exceed the highest rate allowed under applicable law. Payment of such interest shall not excuse or cure any default by Tenant under this Lease. In the event that either Tenant is more than ten (10) days late in making any payment due under this Lease, or any payment from Tenant to Landlord does not clear the bank or is returned for insufficient funds, and either such condition occurs on two

or more occasions, or each occurs once, Landlord shall have the right at any time thereafter to require that all succeeding payments of Rent be paid to Landlord in certified funds drawn on a bank located in the metropolitan area in which the Premises are located. Said right may be exercised by Landlord by giving notice of such requirements to Tenant, but the giving of such notice and the exercise of this right by Landlord shall not be construed to be a waiver of any default or Event of Default by Tenant or any other right which Landlord may exercise under this Lease.

20. SURRENDER OF PREMISES/HOLDOVER.

At the termination of this Lease, Tenant shall peaceably leave, quit and surrender the Premises in the same condition as originally accepted except for permitted alterations and improvements, nominal damage and normal wear and tear excepted. Any personal property of Tenant or any subtenant remaining in or on the Premises after the termination or expiration of this Lease shall be deemed to have been abandoned and be retained by Landlord as its property, or may be disposed of by Landlord at Tenant's sole cost, expense and risk without accountability in such manner as Landlord may see fit. Tenant shall include any such provision in any sublease agreement between Tenant and its subtenants.

If Tenant continues to occupy the Premises after the termination or expiration of this Lease (a "Holdover"), such Holdover shall be deemed a tenancy from month-to-month upon the same Rent and other terms and conditions as existed immediately prior to the commencement of the Holdover.

21. SUBORDINATION OF LEASE.

This Lease is subject and subordinate to all mortgages or deeds of trust which may now or hereafter encumber the Premises and/or the Building and to all renewals, modifications, replacements and extensions thereof. In confirmation of such subordination Tenant and Landlord shall, upon request of the other party, execute and deliver (and shall cause the holder of any mortgage or deed of trust encumbering the Premises to join in such execution and delivery), in recordable form, any instrument of subordination requested. In the event of a foreclosure under any such mortgage or deed of trust, this Lease, shall continue in full force and effect, in which event Tenant agrees to attorn, by written instrument, to such holder or purchaser. Any such mortgage or deed of trust may, at any time, at the request of the holder of the note secured thereby be subordinate to this Lease.

22. FORCE MAJEURE.

Unless otherwise expressly provided in this Lease and other than the payment of rent and other sums due Landlord or Tenant hereunder, a party shall not be liable to the other party for delays or failures in performance of any of its obligations under this Lease because of acts of God; acts of a public enemy; acts of war, whether declared or undeclared; insurrections; riots; fires; explosions; accidents; epidemics; quarantine

restrictions; acts of government; failures of transportation; freight embargoes; strikes or other labor disputes causing work to be stopped, slowed, or interrupted; or any other force majeure (collectively, "Force Majeure"), provided, however that such delays or failures were beyond that party's reasonable control and were not caused by its fault or negligence. If a delay or failure of performance occurs that is excusable under this provision, the period for performance shall be extended for a time equal to the time lost because of the Force Majeure.

23. **NO THIRD PARTY BENEFICIARIES.**

The provisions of this Lease are for the benefit of Tenant or Landlord, and no other parties shall have any right or claim against Tenant or Landlord by reason of this Lease or be entitled to benefit therefrom or to enforce any of the provisions thereof.

24. **TIME FRAMES.**

If any date hereunder falls on a Saturday, Sunday or legal holiday, such date shall automatically be extended until the next following business day. For purpose of this Lease, Saturday is not a "business day".

25. **BINDING EFFECT; AMENDMENTS.**

The covenants, agreements, and rights contained in this Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Landlord and Tenant. This Lease constitutes the entire, full and complete understanding and agreement between Landlord and Tenant, and all representations, statements, warranties, covenants, promises or agreements previously made or given by either party to the other are expressly merged into this Lease and shall be null, void and without legal effect. Neither party, nor any agent of either party, has any authority to alter, amend or modify any of the terms of this Lease, unless the amendment is in writing and executed by all parties to this Lease with the same formality as this Lease. This Lease shall not be effective or binding unless and until signed by all parties, and approved as required by law.

26. **PRESUMPTIONS.**

No presumption shall be created in favor of or against any of the parties to this Lease with respect to the interpretation of any term or provision of this Lease due to the fact that this Lease, or any part hereof, was prepared by or on behalf of one of the parties hereto.

27. **HEADINGS.**

The heading of the sections of this Lease are inserted for convenience only and do not alter or amend the provisions that follow such headings.

28. **BROKERAGE.**

Tenant and Landlord each warrant that it has had no dealings with any broker or agent in connection with this Lease.

29. **GOVERNING LAW/VENUE.**

This Lease shall be governed by, and construed according to the laws of the Commonwealth of Virginia as to all matters, whether of validity, interpretation, obligations, performance or otherwise. The parties choose the City of Norfolk, Virginia, as the venue for any action instituted pursuant to the terms of this Lease.

30. **COUNTERPARTS.**

This Lease may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

31. **ADDITIONAL PROVISIONS.**

This Lease is subject to the following terms, conditions, modifications, additions and/or deletions provided in the following designated attachments, exhibits and riders, which are hereby incorporated into this Deed of Lease:

Exhibits: A, B, C-1, C-2
Schedule 1 to Exhibit C-1