

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: February 24, 2015 CUT OFF DATE: \_\_

RESOLUTION X ORDINANCE \_\_ PUBLIC HEARING \_\_

ITEM TITLE: Resolution that Approves of the City Manager's Execution of a Lease between the City of Winchester and Branch Banking and Trust for Professional Office Space

STAFF RECOMMENDATION: Approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: Annual rent of \$262,040.96 will be sourced from the City's General Fund.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	<i>B</i>		2-19-15
2.			
3.			
4.			
5. City Attorney	<i>AW</i>		2/19/2015
6. City Manager			
7. Clerk of Council			

Initiating Department Director's Signature: *Edwin Juman* Date: 18 Feb 2015  
City Manager



# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council

**From:** Eden Freeman, City Manager

**Date:** 02/24/2015

**Re:** Adoption of a Resolution that Approves of the City Manager's Execution of a Lease Between the City of Winchester and Branch Banking and Trust for Professional Office Space

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**THE ISSUE:** The Winchester City Council's adoption of the attached resolution approves of the City Manager's execution of a lease between the City of Winchester and Branch Banking and Trust to provide office space for the City of Winchester Commonwealth Attorney's Office.

**RELATIONSHIP TO STRATEGIC PLAN:** Goal Three: Develop a High Performing Organization.

**BACKGROUND:** The Winchester-Frederick County Joint Judicial Center's impending renovations requires that the City of Winchester Commonwealth Attorney's Office and the Juvenile and Domestic Relations Court Services office to move to new office space to accommodate additional judges and court staff. The City issued Request for Proposal Number 201419 (RFP) to solicit offers for professional office space that would meet the needs of the Commonwealth Attorney's Office. Branch Banking and Trust's bid met the RFP's requirements and provided the necessary space for the Commonwealth Attorney's Office.

**BUDGET IMPACT:** Annual rent of \$262,040.96 will be sourced from the City's General Fund. The lease commences March 1, 2015 and will last for 60 months; however, the lease includes a credit for the first six months. However, since the Juvenile and Domestic Relations Court Services (J&DRCS) unit serves both the City of Winchester and Frederick County, Frederick County has agreed to cover ½ the cost of the space to be occupied by J&DRCS. This amounts to \$50,630.

**OPTIONS:** Council may approve or disapprove the attached resolution.

**RECOMMENDATIONS:** City Staff recommends the adoption of this resolution.

**A RESOLUTION THAT APPROVES OF THE CITY MANAGER'S EXECUTION OF A LEASE BETWEEN THE CITY OF WINCHESTER AND BRANCH BANKING AND TRUST FOR PROFESSIONAL OFFICE SPACE FOR THE CITY OF WINCHESTER COMMONWEALTH ATTORNEY'S OFFICE**

WHEREAS, the City of Winchester's Commonwealth Attorney's Office and Juvenile and Domestic Relations Court Services Unit are currently located in the Winchester-Frederick County Joint Judicial Center; and,

WHEREAS, the impending renovations to the Winchester-Frederick County Joint Judicial Center require the relocation of the City of Winchester Commonwealth Attorney's Office and Juvenile and Domestic Relations Court Services Unit from the facility; and,

WHEREAS, the City of Winchester issued Request for Proposal Number 201419 that sought bids from all qualified entities to lease professional office space in the City of Winchester for the Commonwealth Attorney's Office; and,

WHEREAS, Branch Banking and Trust submitted a bid sheet that offered 7,625 square feet of professional office space at 112 N. Loudoun Street and 12,107 square feet of professional office space at 100-110 N. Loudoun Street for lease; and,

WHEREAS, Branch Banking and Trust's bid was the only submitted bid that meets all requirements listed in the City of Winchester's Request for Proposal Number 201419; and,

WHEREAS, the Selection Committee for RFP 201419 and Staff recommend that Council approves of the Manager's execution of a contract on behalf of the City pursuant to Branch Banking and Trust's submitted response to RFP 201419; and,

WHEREAS, the Lease Agreement submitted by Branch Banking and Trust provides that lease payments shall not commence until July 1, 2015, and therefore, this authorization and the appropriation of necessary funds shall be further memorialized in the City's FY2016 Budget Ordinance; and,

WHEREAS, the Manager and Staff have recommended that Council approve of the Manager's execution of the attached lease in order to continue moving forward with the relocation of the Commonwealths Attorney's Office and the Juvenile and Domestic Relations Court Services Unit in furtherance of the renovations of the Joint Judicial Center.

NOW THEREFORE BE IT RESOLVED, that the Winchester City Council approves of the City Manager's execution of the attached lease between the City of Winchester and Branch Banking and Trust for professional office space at 112 N. Loudoun Street and 100-110 N. Loudoun Street.



## City of Winchester, Virginia

Office of the City Attorney  
Rouss City Hall  
22601  
540-667-1815  
Fax: 667-2259

### CONTRACT

#201419

THIS CONTRACT WAS MADE AND ENTERED INTO THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2015 BY AND BETWEEN **BRANCH BANKING AND TRUST COMPANY**, A NORTH CAROLINA BANKING CORPORATION, 115 N CAMERON ST, WINCHESTER VIRGINIA 22601, F.I.N. NUMBER 54-1027360 ("CONTRACTOR"), AND THE **CITY OF WINCHESTER, VIRGINIA**, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA ("CITY").

WHEREAS, THE CITY HAS PREVIOUSLY ISSUED REQUEST FOR PROPOSAL NUMBER 201419 ("RFP#201419"), DATED NOVEMBER 10, 2014 SEEKING BIDS FROM ALL QUALIFIED CONCERNS TO LEASE PROFESSIONAL OFFICE SPACE IN THE CITY OF WINCHESTER, AS MORE FULLY DESCRIBED IN THE RFP, AND;

WHEREAS, CONTRACTOR HAS SUBMITTED A BID SHEET AND PROPOSAL IN RESPONSE TO THE RFP DATED DECEMBER 5, 2014 BY JOHN SCHROTH, WHICH STATES SPECIFIED LEASE PRICE.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. THE CONTRACTOR SHALL LEASE THE CITY WITH THE BUILDING OUTLINED IN RFP #201419, WHICH IS INCORPORATED IN ITS ENTIRETY HEREIN BY REFERENCE. THE CITY SHALL PAY THE CONTRACTOR THE SPECIFIED RATES HEREIN FOR THE RENTAL OF THE BUILDING. THE CITY SHALL PAY SUCH RENT IN ACCORDANCE WITH THE PROMPT PAYMENT ACT PROVISIONS OF THE VIRGINIA PUBLIC PROCUREMENT ACT, WHICH ARE INCORPORATED HEREIN BY REFERENCE.
2. THE TERM OF THIS CONTRACT SHALL BE FROM MARCH 1, 2015 UNTIL, FEBRUARY 29, 2020. UNLESS SOONER TERMINATED. THE CITY AT ITS SOLE OPTION CAN RENEW THIS CONTRACT FOR AN ADDITIONAL FIVE (5) TWELVE (12) MONTH PERIODS.
3. THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM ANY AND ALL CLAIMS OF ANY DESCRIPTION WHATSOEVER ARISING FROM OR CAUSED BY THE CONTRACTOR'S PERFORMANCE OR NONPERFORMANCE OF THIS CONTRACT. IN ADDITION, THE CONTRACTOR HAS, AT THE TIME OF ITS EXECUTION OF THIS

CONTRACT, PROVIDED THE CITY WITH A CERTIFICATE OF INSURANCE SHOWING THAT IT HAS CURRENTLY IN FORCE ALL OF THE INSURANCE REQUIRED BY RFP #201419, WITH THE CITY NAMED AS AN "ADDITIONAL INSURED" ON SUCH CERTIFICATE. CONTRACTOR COVENANTS THAT SUCH CERTIFICATE SHALL REMAIN IN FULL FORCE AND EFFECT THROUGHOUT THE TERM OF THIS CONTRACT, AND THAT IT WILL PROMPTLY NOTIFY THE CITY IN THE EVENT SUCH INSURANCE IS NO LONGER IN EFFECT FOR WHATEVER REASON.

4. THE FOLLOWING GENERAL TERMS AND CONDITIONS APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT SHALL APPLY IN ALL INSTANCES. IN THE EVENT THERE IS A CONFLICT BETWEEN ANY OF THE OTHER GENERAL TERMS AND CONDITIONS AND ANY SPECIAL TERMS AND CONDITIONS IN THIS SOLICITATION, THE SPECIAL TERMS AND CONDITIONS SHALL APPLY AND TAKE PRECEDENCE.

THE CITY'S PROCUREMENT, CONTRACTOR'S RESPONSE AND WRITTEN NEGOTIATION SUMMARY SHALL FORM PART OF THE CONTRACT. IN THE CASE OF CONFLICTS, DISCREPANCIES, ERRORS OR OMISSIONS AMONG THE CITY'S PROCUREMENT, THE CONTRACTOR'S RESPONSE, WRITTEN NEGOTIATION SUMMARY AND THE MAIN BODY OF THE CONTRACT, THE DOCUMENTS AND AMENDMENTS TO THEM SHALL TAKE PRECEDENCE AND GOVERN IN THE FOLLOWING ORDER:

1. CONTRACT
2. CITY'S PROCUREMENT DOCUMENT(S)
3. CONTRACTOR'S RESPONSE
4. CONTRACTOR'S LEASE AGREEMENT

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS INSTRUMENT ON THE DATE INDICATED BELOW.

CONTRACTOR:

CITY OF WINCHESTER:

BY: Brenda H. Shamloo

BY: \_\_\_\_\_

TITLE: Vice President

TITLE: \_\_\_\_\_

DATE: 2/11/2015

DATE: \_\_\_\_\_

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), is made as of the 10th day of February, 2015, by and between BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, (the "Landlord") and CITY OF WINCHESTER (the "Tenant").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### 1. DESCRIPTION OF LEASED PROPERTY.

(A) Subject to the terms and conditions hereinafter set forth, Landlord hereby Leases to Tenant, and Tenant hereby Leases from Landlord, 7,625 square feet on the first and second floors in that certain building located at 112 N. Loudoun Street, Winchester, Virginia (the "112 Building") and 12,107 square feet on the second floor in that certain building located at 100-110 N. Loudoun Street, Winchester, Virginia (the "100 Building"; the 112 Building and the 100 Building are collectively referred to as the "Building") (collectively the "Premises"), the Premises being more particularly shown on Exhibit "A" attached hereto and incorporated by this reference herein.

(B) Tenant acknowledges and agrees, that: (i) Landlord has not made, is not making and specifically disclaims any representation, warranty, guarantee or assurance to Tenant regarding the Building or the Premises, express or implied, including, without limitation, any representation, warranty, guaranty or assurance regarding title, physical condition, suitability, zoning, mold or mildew; and (ii) except as otherwise specifically provided in this Lease, the Premises are being leased to Tenant in their present state and condition, "AS IS - WHERE IS" and with all faults.

2. TERM. (A) The term of this Lease shall be for a period of sixty (60) months (the "Term"), beginning on March 1, 2015 (the "Commencement Date"). The Term shall expire and terminate at midnight sixty (60) months from the Commencement Date (the "Expiration Date"). A "Lease Year" shall be defined as each successive period of twelve (12) consecutive calendar months commencing on the Lease Commencement Date and ending on the day that is exactly twelve (12) months thereafter.

### 3. RENT.

(A) Beginning on the Commencement Date and throughout the term of the Lease, Tenant shall pay to Landlord as rental for the Premises, an annual rent of \$262,040.96, payable in monthly installments of \$21,836.75. In the event the lease Commencement Date shall be a day other than the first day of a calendar month or the Expiration Date shall be a day other than the last day of a calendar month, the monthly rental installment for such first or fractional month shall be prorated on the basis of the number of days during the month this Lease was in effect in relation to the total number of days in such

month. Rent for the first four (4) months of the Term shall be abated provided that no Event of Default exists under this Lease.

(B) Rent shall be payable in advance on the first day of each month during the Term of this Lease and shall be mailed to BB&T, Tenant Income Account, PO Box 890943, Charlotte, NC 28289-0943 or such other place as Landlord may designate to Tenant by written notice. Tenant's obligation to pay Rent is an independent covenant, and Landlord's failure to perform any of its obligations or responsibilities under this Lease shall not result in an abatement of Rent, entitle Tenant to withhold Rent or otherwise affect Tenant's liability for the payment of Rent. All Rent shall be paid by Tenant to Landlord without deduction, demand, notice or offset. The acceptance of any Rent by Landlord shall not constitute or be deemed to be: (i) a waiver of any claim or right, including, but not limited to, any claim based on Tenant's default under or non-compliance with the terms of this Lease, (ii) a grant of consent or permission with respect to any matter, or (iii) an acknowledgment of Tenant's purported exercise of any option.

(C) If Tenant fails to pay any installment of Rent within ten (10) days after the same is due, Tenant shall pay to Landlord a late charge equal to one 1% percent of such unpaid installment to cover Landlord's administrative costs and other expenses. In addition, any past due installment of Rent shall bear interest from the date due until paid at a rate which is the lesser of (i) eighteen percent per annum, or (ii) the maximum rate permitted under applicable laws. The parties agree that the provisions of this subsection are reasonable and shall not be deemed to be (i) a consent by Landlord to late payments, (ii) a penalty, (iii) a waiver of Landlord's right to insist on the timely payment of Rent, or (iv) a waiver or limitation of the rights and remedies available to Landlord on account of the late payment of any Rent.

#### 4. USE OF PREMISES.

(A) Tenant shall have the right to use the Premises only for business/government office purposes (the "Permitted Use") and for no other use without the prior written consent of Landlord. Tenant shall comply with all laws, ordinances, rules and regulations (state, federal, municipal and other agencies or bodies having jurisdiction thereof) relating to the use, condition or occupancy of the Premises. Tenant shall comply and cause its agents, employees, contractors, representatives and invitees to comply with the rules and regulations attached hereto as Exhibit "B" and incorporated herein by this reference, as same may be reasonably amended, modified or supplemented from time to time by Landlord; provided that Tenant has notice of any such amendments or modifications of said rules and regulations. Any failure by Landlord to enforce the rules and regulations shall not constitute a waiver of same. Tenant shall not to permit any use of the Premises, which will constitute waste or nuisance.

(B) Notwithstanding anything herein to the contrary, Tenant shall not use the Premises for banking or other similar financial, lending, savings or mortgage related or securities services (including without limitation, the sale of and provision of services related to all types of insurance and insurance related products (including claims inspections), mortgages, credit cards, auto loans, deposit and checking accounts,

investment products, or automatic teller machines), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion.

(C) Tenant shall not commit or allow waste or damage to be committed on any portion of the Premises. Tenant shall not occupy, use or permit any portion of the Premises to be occupied or used for any business or purpose which is unlawful, disreputable or deemed to be extra-hazardous on account of fire, or permit anything to be done which would in any way increase the rate of fire or liability or any other insurance coverage on the Building. At the expiration or earlier termination of this Lease, Tenant shall deliver the Premises to Landlord in as good condition as the Commencement Date, ordinary wear and tear and damage by insured casualty excepted.

(D) Tenant acknowledges and agrees that Landlord operates an ATM at 112 N. Loudoun Street. Landlord shall continue to operate the ATM and shall have access to the ATM room located in the 112 Building at all times. Tenant agrees that it will not interfere in any way with such ATM operations or do anything to prohibit Landlord from having access to the ATM room. Tenant shall comply with all security rules and regulations, if any, developed by Landlord in addition to the rules and regulations set forth in Exhibit B, upon Tenant's notice of same.

5. IMPROVEMENTS AND ALTERATIONS. Tenant shall not make any improvements or alterations to the Premises, without first having obtained the prior written consent of Landlord, which consent shall not be unreasonably withheld. If approved, any said alterations, additions or improvements shall be in compliance with all applicable building codes. All alterations, additions and improvements in or on the Premises made by Tenant (except Tenant's furniture, trade fixtures, and any equipment and shelving installed by Tenant or furnished at Tenant's expense and removable without damaging the Premises in any manner) shall become the property of Landlord and shall remain and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term of this Lease unless at the time of giving its consent, Landlord notifies Tenant that such specified alterations, additions or improvements are to be removed upon expiration or termination of this Lease and in such event, Tenant shall remove same prior to expiration or termination of this Lease and restore the Premises to the condition immediately preceding such alteration, addition or improvement, ordinary wear and tear and damage by insured casualty excepted. Tenant shall promptly repair any damage to the Building or Premises caused by the installation or removal of its furniture, trade fixtures, equipment or shelving.

6. PERSONAL PROPERTY AND REMOVAL. Tenant agrees hereby that all fixtures and other property of any nature, description and kind placed in, upon or about the Premises by Tenant, its agents, servants, employees, licensees, and invitees, shall be at the sole risk of the Tenant. Provided that Tenant is not in default under the terms of this Lease, beyond any applicable cure period, Tenant shall have the right to remove from the Premises any and all equipment and trade fixtures placed in or upon said Premises by Tenant, such removal to be completed prior to the Expiration Date. Tenant

shall promptly repair any damage to the Premises or the Building caused by the removal or installation of such fixtures and/or property.

7. UTILITIES/REPAIRS. Tenant covenants and agrees during the Term of this Lease to pay promptly when due all telephone, cable, internet, license fees and all other charges of any nature and kind whatsoever, imposed, charged or levied against the Premises, in connection with the use and occupancy of the Premises by Tenant, and the cost of any repairs caused by any negligence or intentional misconduct on the part of Tenant and/or its employees or independent contractors employed by it.

8. ASSIGNMENT AND SUBLETTING. Tenant may not assign or encumber the Lease or sublet the Premises under any circumstances without Landlord's prior written approval, such consent not to be unreasonably withheld. It will be reasonable for Landlord to withhold its consent for reasons, including but not limited to, if the proposed assignee or subtenant will be of a type which in the reasonable judgment of Landlord will compete with the business operations of Landlord or any of its subsidiaries or affiliates, or is not of a type that is consistent with the use of the Building for general office purposes, or is engaged in a business involving serving members of the public on a retail basis, i.e. requiring a large number of visitors to the Premises, or is not financially able to pay the Rent due under this Lease in the judgment of Landlord, or has a business reputation or standing which the Landlord deems unacceptable or with which the Landlord is prohibited from conducting business or which will cause the Landlord to comply with reporting requirements. In the event Landlord consents to any assignment or sublease, Tenant shall be responsible for paying all of Landlord's actual, out-of-pocket costs (including, but not limited to, attorneys' fees) associated with such assignment or sublease. Further, Tenant shall not be released from its obligations under this Lease following an approved assignment or sublease, unless released in writing by Landlord.

9. MAINTENANCE AND REPAIRS.

(A) Landlord covenants that it will (i) make such repairs to the roof, outside walls, gutters and downspouts and other structural portions of the Building as may be necessary in order to keep the Building in good condition and repair, and (ii) make such repairs to any plumbing, electrical, and mechanical systems that are located within the Premises, except for repairs caused by the negligence or intentional misconduct of Tenant or Tenants agents, contractors or employees (in such event Tenant shall be responsible for the repairs at its sole cost and expense). Except as otherwise specifically provided herein, Landlord shall not be required to make any improvements to, replacements or repairs of any kind or character to the Building or the Premises during the Term of this Lease, except such repairs as may be reasonably deemed necessary by Landlord. Any improvements made by Landlord to the Premises shall be limited to Building standard items, consistent with other similar spaces in the Building.

(B) Tenant shall, at its sole cost and expense, maintain the Premises in good and clean condition and perform all repairs, replacements and/or maintenance

required as a result of the actions or inactions of Tenant's or Tenant's agents, contractors, employees or invitees. In the event Tenant fails to promptly make repairs, replacements or perform maintenance as required by this Section 9(B), Landlord may, at its option, make such repairs, replacements or perform such maintenance and Tenant shall reimburse Landlord for such reasonable costs within thirty (30) days of Tenant's receipt of Landlord's invoice for same.

10. LIENS FOR WORK DONE ON PREMISES. If Tenant shall cause any material to be furnished to the Premises or labor to be performed thereon or therein, Landlord shall, under no circumstances, be liable for the payment of any expenses incurred or for the value of any work done or material furnished. Also, such work shall be at Tenant's expense and Tenant shall be solely responsible to all contractors, laborers, and materialmen furnishing any labor and/or material to the Premises. Nothing herein shall authorize Tenant or any persons dealing through, with or under Tenant to charge the Premises, or any interest of the Landlord therein, or this Lease with any mechanics' or materialmen's liens or other lien or encumbrance. On the contrary, and notice is hereby given, the right and power to charge any lien or encumbrance of any kind against Landlord, this Lease, or the Premises is hereby expressly denied. Notwithstanding the foregoing, should any mechanic's, materialmen's or other lien be filed against the Premises, or any part thereof, for any reason whatsoever by reason of Tenant's acts or omissions or because of a claim against Tenant, Tenant shall cause the same to be cancelled and discharged of record by bond or otherwise within thirty (30) days after notice by Landlord and shall hold Landlord harmless and indemnify Landlord from all costs including costs of defense, expenses and reasonable attorney fees, incurred by Landlord as a result of such lien.

11. HOLDOVER. If Tenant shall holdover beyond the termination of this Lease or any renewal or extension thereof, the occupancy by Tenant subsequent to the termination of this Lease or expiration of the Lease Term without a written agreement with Landlord, shall be from month-to-month and shall not be considered as a renewal or an extension of this Lease. Such continued occupancy shall not defeat Landlord's right to possession of the Premises and shall be at a rental rate of 150% of the rental rate in effect immediately prior to such expiration or termination of this Lease. All other covenants, provisions, obligations and conditions of the within Lease shall remain in full force and effect during such month-to-month tenancy.

12. CHANGE IN OWNERSHIP OF PREMISES. Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Building and property referred to in this Lease, and in such event and upon such transfer, no further liability or obligation shall thereafter accrue against Landlord under this Lease which arises from and after such transfer and assignment, provided, however, that the transferee and assignee assumes the obligations of Landlord hereunder. If the name or address of the party entitled to receive Rent hereunder shall be changed, Tenant shall, until receipt of proper notice of such change, continue to pay the Rent and other charges herein reserved, accrued and to accrue hereunder, to the party to

whom and in the manner in which the last preceding installment of Rent or other charge was paid.

### 13. SERVICES.

(A) Landlord shall provide the following utilities and services to or for the Premises: (i) reasonable heating and air conditioning in season Monday through Friday from 8:00 a.m. to 6:00 p.m. and Saturday from 8:00 a.m. to 12:00 p.m., except for the following holidays recognized by the City of Winchester: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day; (ii) maintenance and repair of the common areas of the Building; and (iii) electricity for the equipment or machinery of Tenant which is of a type normally used in an office setting (will not necessitate structural changes to the Building and does not require high electricity consumption for operation). Tenant acknowledges and agrees that Landlord shall not provide janitorial services for the Premises and that Tenant will be responsible for same.

(B) Except as expressly provided herein, Landlord's inability to furnish to any extent, these defined services, or any cessation thereof, resulting from any causes, shall not render Landlord liable for damages to either person or property, nor be construed as an eviction of Tenant nor work an abatement of any portion of Rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof, including but not limited to the payment of Rent, provided, however, that Landlord uses reasonable diligence to restore such service promptly, which Landlord covenants to do. Landlord shall have no responsibility or liability for interruption, curtailment or failure to supply cooled or outside air, heat, elevator, plumbing or electricity when prevented by strikes, labor troubles or accidents or by any cause reasonably beyond Landlord's control, or by failure of independent contractors to perform or by laws, orders, rules or regulations of any federal, state, county or municipal authority, or failure of fuel supply, or inability by exercise of reasonable diligence to obtain suitable fuel or by reason of governmental preemption in connection with a national emergency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency. The exercise of such right or such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any compensation or to any abatement or diminution of Rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise.

14. CONDEMNATION. If the whole of the Premises, or such substantial portion thereof as will make Premises unusable for the purposes referred to herein, be condemned by any legally constituted authority for any public use or purpose, then in either of said events, the Term hereby granted shall terminate at the time when possession thereof is taken by the condemning authority, and rental shall be accounted for as between Landlord and Tenant as of that date. Tenant shall have no claim against Landlord or the condemning authority for any portion of the amount of the condemnation award or settlement that Tenant claims as its damages arising from such condemnation or

acquisition or for the value of any unexpired term of the Lease. Landlord shall be entitled to receive the entire award paid on account of a taking of all or any portion of the Premises, except Tenant shall be entitled to receive amounts expressly awarded to cover Tenant's moving expenses, trade fixtures, equipment and personal property if applicable, but Tenant shall not have such claim against Landlord, nor shall Tenant's award reduce the award to Landlord. In the event a portion condemned is such that the remaining portion can, after restoration and repair, be made useable for Tenant's purpose, then this Lease shall not terminate; however, the Rent shall be reduced equitably by the amount of the Premises taken. In such an event, Landlord shall make such repairs as may be necessary as soon as the same can be reasonably accomplished, to a condition which substantially conforms to the condition immediately preceding the taking, provided however, in no event shall Landlord be required to spend more than the award paid Landlord on account of such taking.

15. SUBORDINATION. The parties hereto understand that Landlord may, from time to time, desire to encumber Landlord's interest in the Building with a mortgage or deed of trust, and may desire, in connection with the execution of such mortgage or deed of trust, to cause the within Lease to be made subordinate in lien and claim to the lien or liens of such mortgage or deed of trust. Tenant therefore covenants and agrees that Tenant will, from time to time, at the request of Landlord, execute an instrument or instruments in such form as may be required by Landlord or by the mortgagee of such mortgage or deed of trust as evidence of such subordination.

16. INSURANCE.

(A) Landlord shall pay during the Term hereof, the cost of fire insurance covering the Premises and the cost of insurance covering such other risks as are from time to time included in standard extended coverage endorsements in such amounts as are reasonably acceptable to Landlord. Landlord shall be entitled to self insure any of the coverages required to be maintained by Landlord under this Lease. Tenant shall insure all personal property owned by Tenant or others and located in the Premises and Landlord shall have no responsibility as to any such property. Tenant further agrees that it shall not suffer anything to remain upon or about the Premises, nor carry on nor permit in the Premises any trade or occupation, or suffer to be done anything which may render an increased or extra premium payable for the insurance on the Premises against fire, or other perils included under standard extended coverage insurance, unless Landlord shall consent in writing. Tenant shall pay (and defend against) all costs, expenses, damages, claims, losses and liabilities to the same extent that a third party insurance company would have under the policies hereunder.

(B) Tenant, at its sole cost, shall obtain and maintain in full force and effect at all times during the Term of this Lease: (i) hazard insurance (written on an "all risk" and full replacement value basis with an extended coverage endorsement) insuring against damage to and loss of Tenant's improvements, fixtures, equipment, furniture and all other personal property in and about the Premises; (ii) commercial general liability insurance insuring against any liability imposed for, or arising, directly or indirectly, out of injuries to person or property arising out of the ownership, maintenance, occupancy or

control of the Premises on an occurrence basis in the amount of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate combined for bodily injury and property damage, and not less than \$500,000.00 for property damage for any one occurrence, (iii) workers compensation or similar insurance in form and amounts required by law.

(C) All such policies of insurance obtained by Tenant hereunder shall be issued in the name of Tenant and include Landlord as additional insured. Except after the insurance companies have endeavored to provide thirty (30) days prior written notice to the Landlord (except ten (10) days for the nonpayment of premium), such insurance may not be (i) cancelled, or (ii) amended so as to reduce the coverage amount or materially reduce the type of coverage. Tenant shall deliver to Landlord a certificate of insurance upon the Commencement Date and thereafter within ten (10) days upon request by Landlord.

(D) In the event any insurance required to be maintained by Tenant under this Lease shall expire, be withdrawn, lapse, become void or un-secure by reason of Tenant's breach of any condition therefore or by reason of the failure or impairment of the capital of any carrier thereof, or if for any reason whatsoever the insurance shall be unsatisfactory to Landlord, Tenant shall immediately place new insurance on the Premises which conforms to the insurance requirements set forth in this Lease. Further, in the event of any default beyond any applicable notice and cure period by Tenant with respect to its obligations pertaining to insurance, Landlord, at its option but without being obliged to do so, and in addition to any other rights and remedies Landlord may have on account of such default, shall have the right to cure such default upon prior written notice to Tenant (including, without limitation, the right to purchase single interest coverage protecting only the interest of Landlord and the right to make premium payments), whereupon all costs and expenses incurred by Landlord in curing such default together with interest at the Default Rate from the respective dates of expenditures by Landlord, shall be paid by Tenant within thirty (30) days of receipt of an invoice from Landlord.

## 17. INDEMNITY.

It is the intention of the parties that Tenant look solely to its insurers in the event of any injury, damage to Tenant's property or any interruption of Tenant's use of the Premises. Accordingly, except to the extent caused by the gross negligence or willful misconduct of Landlord, its employees or agents, Tenant hereby expressly waives and releases all claims it may, now or hereafter, have against Landlord as a result of any injury, damage to property, or interruption of Tenant's use of the Premises, including, but not limited to, any injury, damage or interruption caused by (i) wind, water, flooding, snow, ice, act of God or act of nature, (ii) any interruption of utility service to the Premises, (iii) any defect in the Premises (latent or otherwise), (iv) any failure of a mechanical system, electrical system, plumbing system or heating and air conditioning system, (v) the backing up of any sewer pipe or downspout, or (vi) the bursting, breaking, leaking or running of any tank, tub, washstand, water closet, drain or pipe.

## 18. CASUALTY DAMAGE.

(A) In the event that the Premises or the Building are damaged for any reason whatsoever and Tenant will be unable, in Landlord's reasonable determination, to carry on its normal business operations in the Premises for a period of ninety (90) days or more, Landlord shall notify Tenant and Tenant shall have the right to terminate this Lease by giving notice of such termination to Landlord no later than thirty (30) days after the occurrence of such damage. Upon such termination, Tenant's obligations hereunder and each of them, including the obligation to pay Rent of any kind or nature, shall cease as of the day the Premises were so damaged, except as otherwise specifically provided herein.

(B) In the event the Premises are partially damaged by fire or other casualty and Landlord and Tenant shall reasonably determine that Tenant is able to carry on its normal business operations, Tenant shall pay Rent for only such portion of the Premises which Tenant occupies during the time required to make repairs. All repairs necessary to repair or restore the Premises to a condition similar to that immediately preceding the damage or casualty shall be (i) commenced within ninety (90) days after the occurrence of such damage; (ii) performed in a diligent and workmanlike manner with material of at least the same quality utilized originally in the construction of the Premises; and (iii) completed by Landlord at Landlord's sole expense. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to commence the repair of the Premises following any fire or other casualty until Landlord has received the insurance proceeds required to fund same, nor shall Landlord be obligated to spend in excess of the insurance proceeds in making such repairs. Tenant shall be required to pay the full amount of rent following Landlord's notice to Tenant of its substantial completion of repairs.

## 19. USE OF HAZARDOUS MATERIALS.

(A) Tenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Building or the Premises. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including attorneys' fees and court costs) which arise during or after the Lease Term as a result of such breach.

(B) As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and waste that are or become regulated under any similar local, state or federal law, other than cleaning and office supplies property stored and used in compliance with any and all applicable local, state or federal laws.

20. WAIVER OF RIGHTS. No waiver by Landlord of any provision hereof shall be deemed to be waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent similar act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of said preceding breach at the time of acceptance of such rent.

21. NOTICES. All notices, consents, approvals and other communications (collectively, "Notices") that may or are required to be given by either Landlord or Tenant under this Lease shall be properly made only if in writing and sent to the address of Landlord or Tenant, as applicable, set forth below, as the same is modified in accordance herewith, by U.S. Certified Mail (Return Receipt Requested) or national recognized overnight delivery service.

Landlord: Branch Banking and Trust Company  
2400 Reynolda Road, 2<sup>nd</sup> Floor  
Winston-Salem, NC 27106  
Attention: Real Estate / Rental Income

With a copy to: Ashley P. Harris  
Parker, Pollard, Wilton & Peadar, P.C.  
6802 Paragon Place, Suite 300  
Richmond, VA 23230

Tenant: City of Winchester  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision or by email transmission with a receipt. Change of address is the only notice which may be sent by email transmission. Notices shall be deemed received: (i) if sent by overnight delivery service, on the date of delivery; and (ii) if sent by United States Certified Mail (Return Receipt Requested), on the day of actual delivery to the intended recipient. The refusal to accept delivery shall constitute acceptance.

## 22. EVENTS OF DEFAULT.

(A) The following shall each be deemed to be a default by Tenant under this Lease (an "Event of Default"):

(i) Tenant's failure to pay any Rent when due, where such failure shall continue for a period of five (5) days after it receives written notice of the same from Landlord, provided however, Tenant shall not be entitled to more than two (2) notices in any twelve (12) month period and the failure to pay

on the due date a third (3<sup>rd</sup>) time during such twelve (12) month period will constitute a default; or

(ii) Tenant's failure to comply with any of the terms of this Lease related to assignment or subletting, or insurance requirements; or

(iii) Tenant's failure to comply with any of the terms of this Lease other than those pertaining to the payment of Rent, assignment or subletting or insurance requirements, where such failure shall continue for a period of thirty (30) days after Tenant receives written notice of the same from Landlord; provided if such failure cannot reasonably be cured within thirty (30) days, no Event of Default shall be deemed to have occurred so long as Tenant commences to cure such failure within thirty (30) days after receiving written notice of the same from Landlord and completes such cure within a reasonable time thereafter, not to exceed ninety (90) days; or

(iv) (a) the bankruptcy or insolvency of Tenant, (b) the filing by or against Tenant of a petition seeking to have Tenant declared bankrupt or insolvent or seeking to reorganize Tenant, unless the petition is dismissed with sixty (60) days after its filing, (c) the appointment of a receiver or trustee for all or a substantial portion of Tenant's assets, or (d) the assignment of all or substantially all of Tenant's assets for the benefit of its creditors.

(B) Remedies. Upon the occurrence of an Event of Default, Landlord may, in addition to other remedies available hereunder, at law or in equity:

(i) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises and Landlord shall have the right to recover its actual damages from Tenant, including without limitation, the cost of recovering possession of the Premises, reasonable attorneys fees, if so ordered by a court of competent jurisdiction, reasonable expenses of reletting, including necessary renovation and alteration of the Premises and real estate commissions, and the balance of the Rent for the remainder of the Term less the fair market value of the Premises for said period. If Tenant fails to surrender the Premises to Landlord after the termination of this Lease, Landlord shall have the right, without notice, to retake possession of the Premises and to expel Tenant and its effects therefrom, without being liable for prosecution or any claim for damage.

(ii) Without terminating this Lease, terminate Tenant's right to possession of the Premises and, if necessary, expel Tenant and its effects therefrom pursuant to applicable law, without being liable for prosecution or any claim for damages. If Landlord retakes possession of the Premises from Tenant pursuant to this subparagraph, Landlord may re-enter and relet the Premises for the benefit of Tenant, at such rent, for such duration and upon such other terms as Landlord, in its sole and absolute discretion, deems advisable, and Landlord may remodel the Premises to the condition as it existed on the Commencement Date of

this Lease to facilitate such reletting. Tenant shall be liable immediately to Landlord for all reasonable costs Landlord incurs in reletting or endeavoring to relet the Premises pursuant to this subparagraph, including, without limitation, reasonable attorneys fees, brokers' commissions, advertising expenses and such remodeling costs. Notwithstanding the termination of Tenant's right to possession of the Premises pursuant to this subparagraph, Tenant shall continue to pay the Rent, when due; provided if Landlord is successful in reletting the Premises, any rent received by Landlord from such reletting that is allocable to periods falling within the Term shall be applied to reduce the amounts Tenant owes Landlord under this Lease, in such order as Landlord reasonably determines proper, including, without limitation, costs and expenses that Landlord incurs to effect compliance with Tenant's obligations hereunder, costs Landlord incurs to recover possession of the Premises, reletting costs, damages, and rental deficiencies. If the rent received by Landlord from reletting the Premises that is allocable to periods falling within the Term exceeds the amounts Tenant owes under this Lease, Landlord shall be entitled to such excess and Tenant shall not have any right thereto.

(iii) Enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease, without being liable for prosecution or any claim for damages, and Tenant agrees to reimburse Landlord for all reasonable costs and expenses that Landlord incurs in connection therewith, if so ordered by a court of competent jurisdiction.

(iv) Obtain specific performance of the terms of this Lease or injunctive relief.

The foregoing remedies are cumulative and non-exclusive and the exercise by Landlord of any of its remedies under this Lease shall not prevent the subsequent exercise by Landlord of any other remedies provided herein. All remedies provided for in this Lease may, at the election of Landlord, be exercised alternatively, successively, or in any other manner. No provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing and signed by Landlord. Landlord's acceptance of Rent following any Event of Default shall not be construed as a waiver of such Event of Default. No custom or practice between the parties in connection with the terms of this Lease shall be construed to waive or lessen Landlord's right to insist upon strict performance of the terms hereof. No act by Landlord with respect to the Premises shall be deemed to terminate this Lease, including, but not limited to, the acceptance of keys or the institution of dispossessory proceedings; it being understood that this Lease may only be terminated by express written notice from Landlord to Tenant, and any reletting of the Premises shall be presumed to be for and on behalf of Tenant, unless Landlord expressly provides otherwise in writing to Tenant. The provisions contained in this section shall be in addition to and shall not prevent the enforcement of any claim Landlord may have against Tenant for anticipatory breach of the unexpired Term of this Lease.

23. COMPLIANCE WITH GOVERNING LAWS.

(A) This Lease shall be governed by and construed under the laws of Virginia and other applicable statutes and regulations of said state. Tenant shall promptly execute and comply with all laws, ordinances, rules regulations and requirements of any or all federal, state and municipal authorities having jurisdiction over the manner in which Tenant's business is conducted, but only insofar as these laws, ordinances, rules, regulations and requirements are violated by the conduct of Tenant's business.

(B) Landlord shall be responsible for ensuring that all common areas of the Building (including parking serving the Building) are in compliance with applicable requirements of the Americans With Disabilities Act (the "ADA") as of the Commencement Date. Tenant shall be responsible for any changes to the Premises required by the ADA, as amended or any successor statute, following the Commencement Date.

24. ENTIRE AGREEMENT. This writing contains and embodies the entire agreement of the parties hereto and shall supersede any and all previous lease agreements or amendments. No representations, inducements or agreements, oral or otherwise between the parties not contained and embodied herein shall be of any force or effect, and same may not be modified, changed or terminated in whole or in part, orally or in any other manner that by agreement in writing duly signed by all of the parties hereto.

25. ATTORNEYS FEES. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party shall be entitled to recover reasonable attorneys' fees from the losing party, if so ordered by a court of competent jurisdiction.

26. JOINT AND SEVERAL LIABILITY. If two or more individuals, corporation, partnership or other businesses, associations or any combination of two or more thereof, shall sign this Lease as Tenant, the liability of each of them shall be joint and several.

27. ESTOPPEL CERTIFICATES. Within ten (10) business days after Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord or its designee a written statement: (i) acknowledging that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as modified, is in full force and effect); (ii) setting forth the date to which the monthly Rent has been paid; (iii) certifying there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord under this Lease (or specifying any such defaults known to Tenant); and (iv) confirming any other facts related to the status of this Lease or the condition of the Premises, but only to the extent of Tenant's knowledge thereof. Any such statement may be relied upon by a prospective purchaser or lender of Landlord.

28. **FORCE MAJEURE.** In the event compliance with any of Landlord's or Tenant's obligations under this Lease is impractical or impossible due to any strike, lockout, labor dispute, embargo, flood, earthquake, storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot sabotage, terrorism, restraint by court order or other occurrence beyond the reasonable control of the party in question ("Event of Force Majeure"), then the time for performance of such obligations shall be extended for a period equivalent to the duration of the Event of Force Majeure; provided, however, the provisions of this section shall not operate to (i) extend the Commencement Date, (ii) excuse, extend or abate Tenant's obligation to pay any Rent, or (iii) excuse Tenant's inability to perform its obligations hereunder because of inadequate finances.

29. **BROKERS.** Landlord and Tenant acknowledge and agree that Colony Realty is representing Landlord in this Lease (the "Broker"). Landlord shall pay the Broker pursuant to a separate agreement. Except for the Broker, each party (i) represents and warrants that it has not dealt with any broker, finder or listing agent in connection with this Lease.

30. **SUCCESSORS AND ASSIGNS.** This Lease shall be binding on the Landlord, Tenant and their respective heirs, successors, executors, administrators and assigns, provided the foregoing shall not be construed to permit any assignment of this Lease requiring consent.

31. **SEVERABILITY.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision will be added as part of this Lease that is similar to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

32. **EXHIBITS.** Landlord and Tenant acknowledge and agree that all schedules, addendum and exhibits referenced in this Lease are attached hereto and incorporated herein.

33. **ACCORD AND SATISFACTION.** Neither the acceptance by a party of a lesser sum than it is due under this Lease, nor any statement on a check or instrument accompanying payment, nor acceptance of Rent shall be deemed an accord and satisfaction, and either party may accept any check or payment without prejudicing such party's right to recover all outstanding amounts due under this Lease and pursue all remedies available hereunder or at law or in equity.

34. **RELATIONSHIP.** The relationship of Landlord and Tenant is solely that of independent third parties engaged in an arms length transaction. Nothing contained in this Lease shall be deemed or constructed as creating a partnership, joint venture, agency relationship or other similar relationship between Landlord and Tenant.

35. **INTENTIONALLY OMITTED.**

36. ACCESS AND LANDLORD ENTRY RIGHTS. Landlord shall have the right to enter the Premises upon reasonable notice to Tenant, to (A) conduct inspections, (B) show the Premises to prospective purchasers, lenders and tenants, and (C) access the maintenance and telecommunications rooms within the Premises, if any, and provided Landlord shall not unreasonably interfere with the operation of Tenant's business on the Premises. In addition, Landlord (and its agents, employees, contractors, and representatives) shall have the right to enter upon the Premises for purposes of performing its obligations and exercising its rights under this Lease, upon notice to Tenant (except in the event of an emergency in which case notice is not required). During the six (6) months prior to the expiration of the Term, Landlord may place "for rent," "for sale," and other similar notices in the Premises and Tenant shall permit such notices to remain without molestation. Additionally, Landlord shall have the right to enter the Premises in accordance with Section 22(B) of this Lease and in the event of emergency without prior notice.

37. PROHIBITED TRANSACTIONS AND PERSONS.

(A) Tenant represents and warrants that to the best of Tenant's knowledge: (i) Tenant and each person or entity owning an interest in Tenant, or occupying any portion of the Premises, is (a) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC List"), and (b) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), and (iii) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

(B) Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not knowingly permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease.

(C) In connection with this Lease or any proposed Assignment of this Lease or sublease, Tenant shall, upon request by Landlord, provide to Landlord the names of the persons holding an ownership interest in Tenant or any proposed assignee or

sublessee, as applicable, for purposes of compliance with Presidential Executive Order 13224 (issued September 24, 2001), as amended.

38. **LIMITATION OF LANDLORD LIABILITY.** Tenant shall look solely to the Landlord's equity in the real estate and the proceeds thereof of which the Premises are part and to no other assets or property of the Landlord for satisfaction of any liability in respect of this Lease and shall not seek recourse against any other property of Landlord, or against the individual partners, members, managers, directors, trustees, officers or shareholders of Landlord or any of their personal assets for such satisfaction.

39. **AUTHORITY.** Tenant hereby represents to Landlord that the execution and delivery of this Lease has been duly authorized by Tenant and that the persons executing this Lease on behalf of Tenant is duly authorized to do so and that same constitutes a binding obligation on the part of the Tenant. Landlord hereby represents to Tenant that the execution and delivery of this Lease has been duly authorized by Landlord and that the persons executing this Lease on behalf of Landlord is duly authorized to do so and that same constitutes a binding obligation on the part of the Landlord.

41. **COUNTERPART EXECUTION.** This Lease may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

42. **OPTION TO RENEW.**

Subject to the provisions set forth below, the Term may be renewed, at the option of Tenant (the "Renewal Option"), for two (2) additional periods of 60 months (the "Renewal Terms"). The Renewal Terms will be upon the same terms, covenants and conditions contained in this Lease, except the Rent due for such Renewal Terms will be as set forth in this Section. Any reference in this Lease to the "Term" will be deemed to include the Renewal Terms and apply thereto, unless it is expressly provided otherwise. Tenant will have no renewal option beyond the aforesaid period.

(a) The Rent during the Renewal Term for the Premises will be at a rate equal to the then Fair Market Rent (as defined in Exhibit C) as determined by Landlord, and for a term equal or comparable to the Renewal Term.

(b) Tenant will be deemed to have accepted the renewed Premises in "as-is" condition as of the commencement of the Renewal Term, and Landlord will have no additional obligation to improve, renovate or remodel the Premises or any portion of the Building or provide any allowance therefor as a result of Tenant's exercise of its option to renew.

(c) In order to exercise such option to renew, Tenant must first deliver to Landlord an initial nonbinding notice to Landlord no later than 90 days before, and no earlier than 180 days before, the Renewal Exercise Deadline, in which Tenant expresses its intention to exercise or interest in exercising such option to

renew and requesting Landlord's determination of Fair Market Rent. Within 30 days thereafter, Landlord will notify Tenant ("Landlord's Renewal Notice") of Landlord's calculation of the Fair Market Rent for the Premises. If Tenant fails to give its initial nonbinding notice when due as provided in this Section, Tenant will irrevocably be deemed to have waived its option to renew. For purposes hereof, the "Renewal Exercise Deadline" means ninety (90) days prior to the Lease Expiration Date.

(d) On or before the Renewal Exercise Deadline, Tenant will deliver to Landlord a final binding notice in which Tenant (i) elects to renew the Lease and accepts the terms stated in Landlord's Renewal Notice, or (ii) declines to renew the Term, in which case Tenant's rights under this Section 42 will be null and void. If Tenant fails to notify Landlord by the Renewal Exercise Deadline, time being of the essence, then Tenant's Renewal Option will be null and void.

(e) After Tenant delivers Tenant's binding notice exercising an option to renew, Landlord will deliver to Tenant an amendment to this Lease reflecting the terms of the renewal, and Tenant will execute such amendment and deliver it to Landlord within 30 days after receipt, but Landlord's failure to prepare such amendment, or either party's failure or refusal to execute and deliver the same, will have no effect on the effectiveness, validity, or enforceability of Tenant's exercise of the Renewal Option. Time is of the essence with respect to the giving of Tenant's exercise notices and execution of such amendment.

(f) Tenant's right to exercise its option to renew this Lease pursuant to this Section 42 is subject to the following conditions: (i) that on the date that Tenant delivers notice of its election to exercise its option to, and at the commencement of the Renewal Term, no Event of Default exists; (ii) that Tenant has not been in Monetary Default (as defined in Section 22) under the Lease two or more times during the Term; and (iii) that Tenant has not assigned the Lease.

43. PARKING. Tenant shall have the exclusive use of thirteen (13) parking spaces adjacent to City Hall on the west side and as shown on Exhibit D attached hereto. Tenant shall have the right, at its' own expense, to install "Reserved" parking signage at each parking space.

44. SIGNAGE. Tenant shall be permitted to install signage on the exterior of the Building. Such signage shall be in the form of a brass plaque similar to the other signage installed at the Building. All signage shall be in compliance with local ordinances and the rules of the Winchester Historic Society and shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be executed under seal for the uses and purposes herein stated, pursuant to authority granted, as of the day and year first above written.

LANDLORD:

BRANCH BANKING AND TRUST COMPANY,  
a North Carolina banking corporation

By: Brenda H. Shambo

Title: Vice President

TENANT:

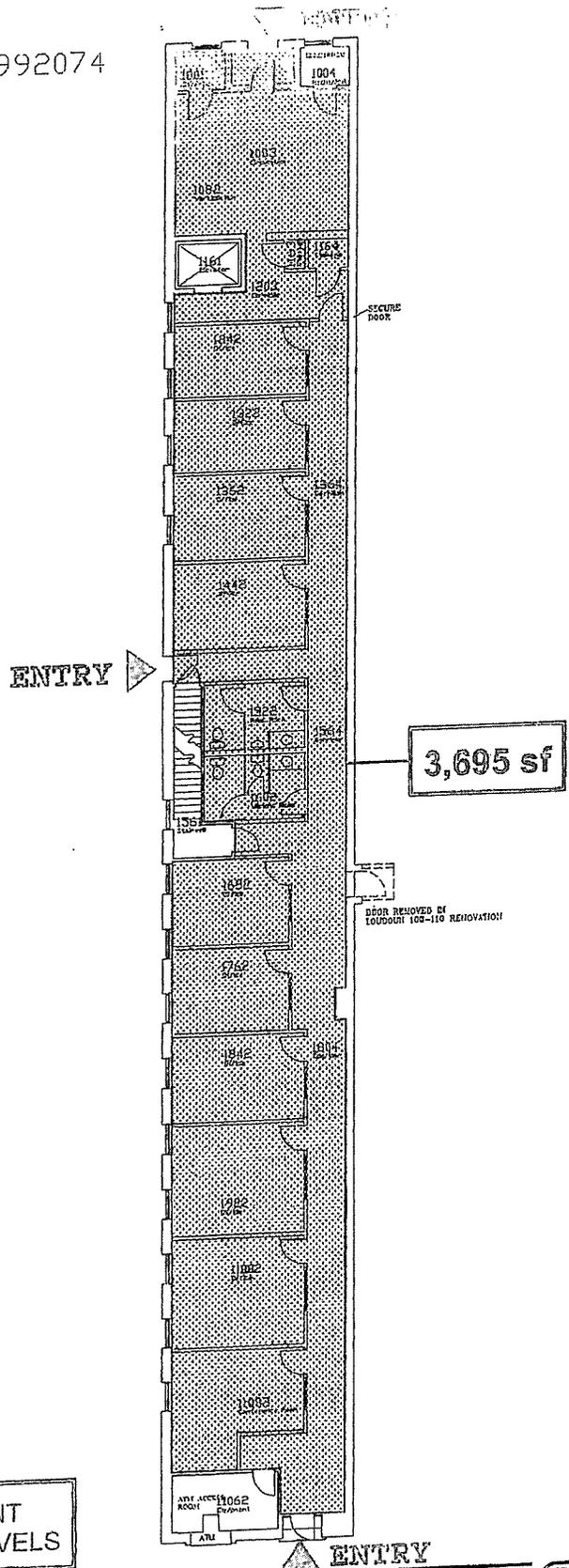
CITY OF WINCHESTER

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A  
(PREMISES)**

Property Code - 992074



 TENANT AREA

OPTION 1 - SINGLE TENANT  
OCCUPIES ALL THREE LEVELS



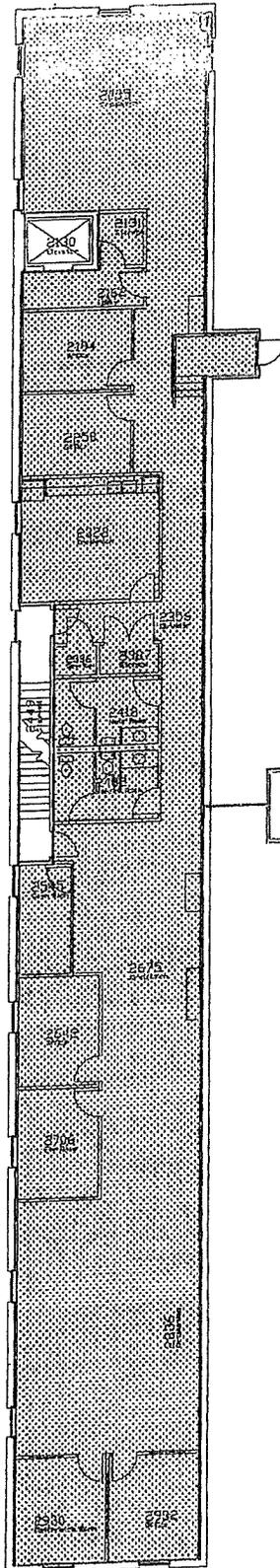
1st Floor  
112 North Loudon St.  
Winchester VA

REVISIONS	SCALE
	N.T.S.
	DRAWN BY
	MM
	DATE

10.22.13



Property Code - 992074



3,930 sf

TENANT AREA

OPTION 1 - SINGLE TENANT  
OCCUPIES ALL THREE LEVELS

**BB&T**

2nd Floor  
112 North Loudon St.  
Winchester, VA

REVISION
3/10/05
3/18/05
4/15/05

SCALE
N.T.S.
DRAWN BY MM
DATE 3/3/05

10.22.13  
**FYIST**



## EXHIBIT B

### RULES AND REGULATIONS

#### OFFICE LEASE

The following Rules and Regulations have been formulated for the safety and well-being of all the tenants of the Building and become effective upon occupancy. Strict adherence to these Rules and Regulations is necessary to guarantee that each and every tenant will enjoy a safe and unannoyed occupancy in the Building. Any repeated or continuing violation of these Rules and Regulations by tenant after notice from Landlord shall be sufficient cause for termination of this Lease at the option of Landlord.

The Landlord may, upon request by any tenant, waive the compliance by such tenant of any of the foregoing Rules and Regulations provided that (1) no waiver shall be effective unless signed by Landlord or Landlord's authorized agent, (2) any such waiver shall not relieve such tenant from the obligation to comply with such rule of regulation in the future unless expressly consented to by Landlord and (3) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the foregoing Rules and Regulations unless such other tenant has received a similar waiver in writing from Landlord.

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors of halls or other parts of the Building not occupied by any tenant shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the demised premises and if the demised premises are situated on the ground floor of the Building the tenant thereof shall, at said tenant's own expense, keep the sidewalks and curb directly in front of said premises clean. Landlord shall have the right to control and operate the public portions of the Building, and the facilities furnished for the common use of the tenants, in such manner as Landlord deems best for the benefits of the tenants generally. No tenant shall permit the visit to the demised premises of persons in such numbers or under such conditions as to interfere with the use and enjoyment by other tenants of the entrances, corridors, elevator and other public portions or facilities of the Building.
2. No awning or other projections shall be attached to the outside walls of the building without the prior written consent of Landlord. No drapes, blinds, shades or screens shall be attached to or hung in or used in connection with any window or door of the demised premises without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord.
3. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any tenant on any part of the outside or inside of the demised premises or Building without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to the tenant or tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each tenant by Landlord, and shall be of a size, color and style acceptable to Landlord.

4. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules without the prior consent of Landlord.
5. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.
6. There shall be no marking, painting, drilling into or in anyway defacing any part of the demised premises or the Building. No boring, cutting or stringing of wires shall be permitted. No tenant shall construct, maintain, use or operate, within the demised premises or elsewhere within or on the outside of the Building, any electrical device, writing or apparatus in connection with a loud speaker system or other sound system.
7. No bicycles, vehicles or animals, birds or pets of any kind, shall be brought into or kept in or about the premises, and no cooking shall be done or permitted by any tenants on said premises, except for a tenant's employees own use. No tenant shall cause or permit any unusual or objectionable odors to be produced upon or permeate from the demised premises.
8. No space in the Building shall be used for manufacturing, for the storage of merchandise or for the sale of merchandise, goods or property of any kind at auction.
9. No tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises of those having business with them whether by the use of any musical instruments, radio, phonograph, unmusical noise, whistling, singing or in any other way.
10. Tenant shall not throw anything out of doors or windows or down corridors or stairs.
11. No inflammable, combustible or explosive fluids, chemicals or substances shall be brought or kept upon the demised premises. Burning of candles are prohibited.
12. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanics thereof. The doors leading to the corridors or main halls shall be kept closed during business hours except as they may be used for ingress or egress. Each tenant shall, upon the termination of his tenancy, restore to Landlord all keys of stores, offices, storage and toilet rooms either furnished to or otherwise produced by such tenant, and in the event of the loss of any keys so furnished, such tenant shall pay to Landlord the cost thereof.
13. All removals, or the carrying in or out of any safes, freight, furniture or bulky matter of any description must take place during the hours which landlord or its agents may determine from time to time. Landlord reserves the right to inspect all freight to be brought into the

Building and to exclude from the Building all freight which violates any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

14. Any person employed by any tenant to do janitorial work within the demised premises must obtain Landlord's consent and such person shall, in the Building and outside of said demised premises, comply with all instructions issued by the superintendent of the Building. No tenant shall engage or pay any employee on the demised premises, except those actually working for such tenant on said premises.
15. No tenant shall purchase spring water, ice, coffee, soft drinks, towels or other like service from any company or persons whose repeated violations of Building regulations have caused, in Landlord's opinion, a hazard or nuisance to the Building and/or occupants.
16. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, such tenant shall refrain from or discontinue such advertising.
17. Landlord reserves the right to exclude from the Building at all times any person who is not known or does not properly identify himself to the building management or watchman on duty.

Landlord may, at its option, require all persons admitted to or leaving the Building between the hours of 6:00 p.m. and 8:00 a.m. Monday thru Friday and at all times on Saturday, Sunday and legal holidays to register. Each tenant shall be responsible for all persons for whom he authorizes entry into or exit out of the Building and shall be liable to Landlord for all acts of such persons.

18. The premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.
19. No tenant shall occupy or permit any portion of the demised premises to be used or occupied as an office for a public stenographer or typist, or for the possession, storage, manufacture or sale of liquor, narcotics, dope, tobacco in any form, or as a barber or manicure shop, or as an employment bureau, unless said tenant's lease expressly grants permission to do so. No tenant shall engage or pay any employees of said premises nor advertise for laborers giving as address said premises.
20. The requirements of tenants will be attended to only upon application at the office of the Building. Building employees shall not perform any work or do anything outside of their regular duties unless under special instruction from the management of the Building.
21. Canvassing, soliciting and peddling in the Building is prohibited and each tenant shall cooperate to prevent the same.
22. No water cooler, plumbing or electrical fixtures shall be installed by any tenant.

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23. Hand trucks, except those equipped with rubber tires and side guards, shall not be used in any space, or in the public halls of the Building, either by any tenant or by the jobbers or others, in the delivery or receipt of merchandise.
24. Where carpet is installed over access plates to underfloor ducts, tenant will be required, at tenant's expense, to provide access when necessary.
25. Mats, trash or other objects shall not be placed in the public corridors.
26. Landlord does not maintain suite finishes which are nonstandard, such as kitchens, wallpaper, special lights, etc. However, should the need for repair arise, Landlord will arrange for the work to be done at the tenant's expense.
27. No employees of tenant shall park in any area around Building other than those spaces designated for tenant parking. Landlord shall not be responsible for lost or stolen property, equipment, money or any article taken from Premises, building or parking facilities regardless of how or when loss occurs, except in the case of gross negligence by Landlord and its agents.
28. The use of any tobacco products is prohibited throughout the entire office building interior including stairwells, hallways, corridors, elevators, foyers, restrooms, any leased premises and in other existing common areas.

## EXHIBIT C

The term "Fair Market Rental" shall mean the market rental rate for the time period such determination is being made for office space in downtown historic district buildings in the Winchester area ("AREA") of comparable condition for space of equivalent quality, size, utility, and location. Such determination shall take into account all relevant factors, including, without limitation, the following matters: the credit standing of Tenant; the length of the term; expense stops; the fact that Landlord will experience no vacancy period and that Tenant will not suffer the costs and business interruption associated with moving its offices and negotiating a new lease; construction allowances and other tenant concessions that would be available to tenants comparable to Tenant in the AREA (such as moving expense allowance, free rent periods, and lease assumptions and take-over provisions, if any, but specifically excluding the value of improvements installed in the Premises at Tenant's cost), and whether adjustments are then being made in determining the rental rates for renewals in the AREA because of concessions being offered by Landlord to Tenant (or the lack thereof for the Renewal Lease Term in question). For purposes of such calculation, it will be assumed that Landlord is paying a representative of Tenant a brokerage commission in connection with the Renewal Term in question, based on the then current market rates.

EXHIBIT D (Parking)

