

SECOND AMENDMENT TO DEED OF LEASE

This **SECOND AMENDMENT TO DEED OF LEASE** (this “Second Amendment”), by and between the CITY OF CHARLOTTESVILLE and the COUNTY OF ALBEMARLE, Virginia (together, “Lessors”) and the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF GENERAL SERVICES (“Lessee”) amends that certain Deed of Lease dated July 1, 1995 (the “Original Lease”) by and between the Lessors and the Virginia Department of Health (“VDH”), as previously amended by the Lessors and VDH dated July 22, 2009 (the “First Amendment”)(together, the “Lease”).

WITNESSETH:

WHEREAS the parties hereto desire to amend the Lease, and for and in consideration of the terms, conditions, covenants promises, benefits and agreements herein provided, the sufficiency of which is acknowledged by each party,

NOW, THEREFORE, the parties do hereby set forth their agreement for amendment of the Lease, as follows:

1. **TERM. Section 1** of the Lease is deleted and replaced with the following:

(A) Pursuant to the First Amendment, the Lease expires on June 30, 2017. The parties hereby agree to a new lease term of five (5) years (the “Extended Term”), commencing on July 1, 2017 (“Commencement Date”) and continuing until midnight on June 30, 2022 (“Expiration Date”). Sections 10 and 11 of the Lease shall be and remain in full force and effect and shall apply to the Extended Term, except that the three (3) month notices referenced in Section 11(A) are hereby changed to six (6) months. Throughout the Lease, all references to the “initial term” shall be deemed and construed as including the Extended Term.

(B) Holdover tenancy: in the event that Lessee timely gives the notice required by section 1(B), above, and the parties are negotiating rent in good faith beyond the Expiration Date, then the Lessee shall be deemed a month-to-month Tenant subject to all terms and conditions of the expired Lease. The month-to-month tenancy shall terminate on such date as either party gives notice to the other in accordance with Section 12 of the Lease.

2. **RENT. Section 2** of the Lease is deleted and replaced with the following:

Lessee covenants to pay Lessors the sum of **\$251,655** per year, as rent for the Demised Premises (“Rent”), payable in equal quarterly installments due and payable in arrears on the last day of each fiscal quarter. Rent shall be made payable to the City of Charlottesville and mailed or delivered to: Attention: Department of Finance, P.O. Box 911, Charlottesville, Virginia, or to such other party or address as the Lessors may from time to time designate in writing.

3. **PURPOSE AND USE OF DEMISED PREMISES.** Section 3 of the Lease is deleted and replaced with the following:

- (A) The Demised Premises may be used and occupied by the Lessee, for and in connection with the operations and services of the Charlottesville-Albemarle Health Department of the Thomas Jefferson Health District, a department of the Commonwealth of Virginia, its officials, employees and agents. The Demised Premises may not be used for any other purpose(s) or use(s) other than as may be authorized by the Lessors' advance written consent; and
- (B) The Lessee may authorize the Charlottesville Free Clinic (the "Licensee"), a Virginia non-profit corporation, to use and occupy the Demised Premises during Lessee's tenancy under the Lease, under such terms and conditions as may be authorized by the Lessee within a written License Agreement. Any such License Agreement shall not contain terms inconsistent with any provisions of this Lease, and it shall not constitute an assignment of this Lease, in whole or in part. The Licensee shall have no privity of contract with the Lessors. The Lessors acknowledge that the License Agreement dated June 12, 2009 was consented to by them in the First Amendment.
- (C) Lessee requires that the Lessors must include as part of this Lease the Firearms Rider attached hereto as **Exhibit B**. The Lessee acknowledge that the Firearms Rider is not a negotiated term of this Lease, but one that has been imposed by the Virginia Department of General Services pursuant to Executive Order 50 of the Governor of the Commonwealth of Virginia. Under no circumstances shall the Lessors' approval of this Lease, or their execution of this Lease document, be deemed a violation of Virginia Code §15.2-915(A), or any other state statute that prohibits or restricts localities from regulating the possession or carrying of firearms. Lessors shall have no obligation, and shall undertake no responsibility, for enforcement or administration of the provisions of the Firearms Rider.

4. **IMPROVEMENTS BY LESSORS.**

Section 5(D) of the Lease is deleted and replaced with the following:

(D) Lessors shall make the following improvements to the Demised Premises pursuant to the attached **Exhibit A** of the Property Condition Assessment Report by EMG dated October 3, 2015) as follows:

Within 12 months of the Commencement Date:

- (1) All ADA improvements completed:
 - 356172
 - 356164
 - 356170
 - 356169

- 356171
- 356165
- 356168
- 356167
- 356166
- (2) Fire alarm control panel replacement:
 - 356319
- (3) Replace all water damaged ceiling tiles.

Within 24 months of the Commencement Date:

- (4) Brick upper exterior pointed
 - 356207 Caulking, expansion joints, 1"x1/2", remove and replace
 - 356206 Repair precast concrete panels due to minor cracks and rust
 - 356204 Point brick wall upper floor
 - 356209 Curtain wall, metal and seal maintenance
- (5) Patch/repair/seal asphalt and sidewalks in parking lots

Within 36 months of the Commencement Date:

- (6) Interior refurbishment other than ceiling tiles
 - a. 356287 Gypsum Board/Plaster/Metal, Interior Wall, Prep & Paint
 - b. 356289 Vinyl Tile Flooring, Replace
 - c. 356288 Carpet, Standard Commercial, Medium Traffic, Replace

Within 48 months of the Commencement Date:

- (7) Replace acoustical tile ceiling
 - 356290

5. **Section 5** of the Lease is further amended, to add a new section 5(E), as follows:

5(E) Lessors reserve a right of entry, pursuant to which Lessors, their employees, agents and contractors, shall have the right to enter and/or pass through any part of the Demised Premises, without prior notice: (i) in case of emergency and (ii) to provide scheduled maintenance services, and (iii) to exercise any other right or obligation of Lessors under this Lease. If Lessors exercise this right of entry in an emergency, then as soon as practicable before or after such emergency entrance, Lessors shall contact the VDH Business Manager and advise that official of such entry. With respect to entry under item (iii), notice of such entry shall be given in advance of such entry. In any event, nothing herein gives to Lessors or their employees, agents or contractors any right to violate the privacy of the patients of the clinic, and due care shall be given at all times to avoid any such invasion of privacy.

6. **UTILITIES AND ROUTINE MAINTENANCE.** **Section 6** of the Lease is amended to add new sections 6(D), 6(E), 6(F), 6(G) and 6(H), as follows:

6(D) *Utilities*--Lessee shall obtain and pay for all heating, air conditioning, electricity, water, and sewage, and other utilities, as may be necessary or desirable for its use and occupancy of the Demised Premises.

6(E) *Janitorial*--Lessee shall provide and pay for janitorial services and supplies as may be necessary or desirable for its use and occupancy of the Demised Premises. Lessor shall provide for collection of refuse from a centralized dumpster.

6(F) *Elevator maintenance and inspections*—Lessors shall provide and pay for routine maintenance and inspections, as well as repair and replacement, of the building elevator.

6(G) *Snow and ice removal*—Lessors shall provide and pay for snow removal from the parking lots, pedestrian walkways, vehicle travel ways, handicapped-accessible ramp, and other exterior areas appurtenant to and part of the Demised Premises.

6(H) *Exterior landscaping*—Lessors shall provide and pay for routine mowing and other maintenance of grass and all landscaping appurtenant to the Demised Premises.

7. **IMPROVEMENTS AND ALTERATIONS OF DEMISED PREMISES.** Section 8 of the Lease is deleted and replaced with the following:

(A) Lessee, or a licensee of Lessee with Lessee's permission, may make such alterations, modifications, additions and/or improvements upon or to the Demised Premises as Lessee deems desirable or advisable; provided, however, that any structural, mechanical or electrical alterations (e.g., alterations to the building roof, building foundation; load-bearing interior walls; exterior walls; replacement of windows; heating and air conditioning systems; electrical systems; fire suppression and/or alarm systems, elevator, etc.) shall require the prior written consent of the Lessors, following an opportunity to review plans for such work. Fixtures and non-structural partitions made and/or installed by Lessee shall remain the property of Lessee and, upon termination of this Lease may, at Lessee's option, be removed.

(B) Lessors shall have the right to make such alterations, modifications, additions and/or improvements upon or to the Demised Premises as Lessors deem necessary or advisable for the purposes of complying with its obligations under this Lease.

8. **DISCLOSURES; NON-WAIVER; APPROPRIATIONS.** Section 11 of the Lease is amended as follows:

The Section heading is changed to read as follows:

**11. TERMINATION; IMMUNITY OF GOVERNMENT ENTITIES;
APPROPRIATIONS**

Sections 11(B) and (C) of the Lease are deleted and replaced with the following:

- 11 (B) Sovereign Immunity. Lessors understand and acknowledge that Lessee and VDH are agencies of the Commonwealth of Virginia and with respect to tort liability for acts or occurrences on or about the Demised Premises, including product liability, the Commonwealth, Lessee and VDH are either (i) constitutionally immune (or partially immune) from suit, judgment or liability, (ii) insured, or (iii) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices. No provision, covenant or agreement contained in the Lease shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia, Lessee or VDH, from tort or other liability.

Lessors hereby expressly reserve all sovereign, governmental and official immunity(ies) available to them under the laws of the Commonwealth of Virginia.

- 11 (C) No Indemnification. Lessors understand and acknowledge that Lessee and VDH have not agreed to provide any indemnification or save harmless agreements running to Lessors. Lessee understands and acknowledges that Lessors have not agreed to provide any indemnification or save harmless agreement running to Lessee or any licensee of Lessee.

New sections 11(D), 11(E) AND 11(F) are added, as follows:

- 11 (D) Choice of Law. The Lease shall be governed by, and construed according to, the laws of the Commonwealth of Virginia.
- 11 (E) Dissolution or Restructuring of VDH. Notwithstanding any other provision of the Lease, if VDH shall cease to exist, and is not replaced by a successor entity with similar powers and purposes, or its powers and authority are limited so as to not permit the continued use of the Demised Premises for its intended purpose and use, then the Lease shall terminate.
- 11 (F) Non-Appropriation. Agencies of the Commonwealth of Virginia, and political subdivisions of the Commonwealth, cannot expend funds unless appropriated by the Virginia General Assembly or their governing bodies, respectively, and may not obligate a future session of the Virginia General Assembly or of a local governing body. It is further understood that the Rent paid by Lessee is derived from appropriations (or federal funding) made to VDH and paid over to Lessee. Therefore, notwithstanding any provision in the Lease to the contrary, if any session of the Virginia General Assembly fails to appropriate funds for the continuance of the Lease for all Occupants, the Lease and all obligations hereunder shall automatically terminate upon depletion of the then currently appropriated or allocated funds. Likewise, the performance of Lessors' obligations under the Lease are expressly made subject to the availability and

appropriation of funds for such purpose by Lessors' respective governing bodies. In the event that the Lessors are unable to meet their obligations herein due to a lack of sufficient appropriation, Lessee reserves the right to terminate this Lease.

9. **NOTICES. Section 12** of the Lease is amended as follows:

12(B): The address for notices to the Division of Real Estate Services, as previously amended in ¶ 4 of the First Amendment, is changed to the following: Division of Real Estate Services, ATTN: Director, 1100 Bank Street, 3rd Floor, Richmond, Virginia 23219.

A new section 12(D) is added, as follows:

12(D) It being acknowledged that the Lessors herein are two distinct governmental bodies, and that any action taken by one does not constitute the action of the other, the following rules apply with respect to notices:

- (1) Any notice sent to the Lessee must be sent by both Lessors. If a notice is sent by only one Lessor it shall have no effect whatsoever. However, if a subsequent identical notice is sent by the other Lessor, then the provisions of such notice shall be deemed effective as of the receipt of the second notice.
- (2) If a request is sent by the Lessee seeking the consent of the Lessors to take some action (e.g., to make improvements to the Demised Premises), the action shall be approved when both Lessors have approved it. If the consent is made conditional, then the consent shall be deemed conditioned only to the extent that both Lessors have set out the same conditions. However, to the extent that the Lessors have an obligation under the Lease, as amended, to act reasonably, and one Lessor fails to respond in a reasonable time to a request by the Lessee while the other Lessor has approved the request, the request shall be deemed approved.
- (3) To the extent that the Lessors have any obligation to perform an action (e.g., lawn maintenance), the obligation shall be deemed to be that of both Lessors, with the understanding, however, that if either Lessor fulfills the obligation then the obligation will be deemed fulfilled.

10. **MODIFICATION AND ASSIGNMENT. Section 15** of the Lease is deleted and replaced with the following:

15(A) This Lease shall not be modified, altered or amended except by mutual written agreement executed by Lessors and Lessee with the same formality as the Lease.

15(B) Lessee may not assign this Lease, or sublet the Demised Premises, without the written consent of the Lessors, which consent shall not be unreasonably withheld or delayed, except that Lessee may assign this Lease to another agency of the Commonwealth of Virginia without Lessors' consent. Any assignment of the Lease shall be subject to all of the terms, conditions and requirements of this Lease.

15(C) Lessors acknowledge that the Lease has been assigned by VDH to the Commonwealth of Virginia, Department of General Services. Lessors consent to this assignment. The Department of General Services, through its Division of Real Estate Services, is responsible for the leasing of space for the use of agencies of the Commonwealth of Virginia. The Department, as Lessee herein, does not contemplate that it will occupy the Demised Premises itself, but rather that the Premises will be used by VDH. VDH shall have the benefit of any rights of Lessee associated with the Lease. VDH is authorized to deal directly with Lessors concerning routine maintenance and repairs, building access, entry of Lessors onto the Demised Premises and similar matters; provided, however, that nothing herein prevents Lessee from dealing directly with Lessors as to any such matters. Lessors shall deal solely with Lessee as to change orders, major repairs, insurance, untenability, breaches or defaults, termination, extensions of the term (including any option terms), and additional charges imposed by Lessors (as may be authorized by the Lease or subsequent agreement of the parties).

11. MISCELLANEOUS.

- (A) Except as amended by this Second Amendment to Deed of Lease, the Lease provisions shall be and remain in full force and effect.
- (B) This Second Amendment to Deed of Lease shall not be effective or binding unless and until signed by all parties and approved by the Governor of Virginia pursuant to Section 2.2-1149 of the Code of Virginia (1950), as amended.

[Signatures begin on next page]

IN WITNESS WHEREOF, the parties have affixed their signatures and seals.

LESSOR: CITY OF CHARLOTTESVILLE

By: Maurice Jones, City Manager

Signature: _____

Date: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing Second Amendment to Deed of Lease was acknowledged before me this _____ day of _____, 201__ by _____ acting in his/her capacity as City Manager of the City of Charlottesville, Virginia.

My commission expires: _____

Registration No. _____

Notary Public

LESSOR: COUNTY OF ALBEMARLE

By: Douglas C. Walker, Interim County Executive

Signature: _____

Date: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing Second Amendment to Deed of Lease was acknowledged before me this _____ day of _____, 201__ by Douglas C. Walker, acting in his capacity as Interim County Executive of the County of Albemarle, Virginia.

My commission expires: _____

Registration No. _____

Notary Public

**LESSEE: COMMONWEALTH OF VIRGINIA
DEPARTMENT OF GENERAL SERVICES**

By: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing Second Amendment to Deed of Lease was acknowledged before me this _____ day of _____, 201__ by _____ acting in his/her capacity as _____ of the Commonwealth of Virginia, Department of General Services, on behalf of the agency.

My commission expires: _____

Registration No. _____

Notary Public

Recommend Approval:
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF GENERAL SERVICES

Director

APPROVED BY THE GOVERNOR

Pursuant to Section 2.2-1149 of the Code of Virginia (1950), as amended, and by the authority delegated to me under Executive Order 88 (01), dated December 21, 2001, I hereby approve this Second Amendment to Deed of Lease and execute this instrument for and on behalf of the Governor or Virginia.

Secretary of Administration

Date:

EXHIBIT A

Property Condition Assessment Report

(Copy Attached)



PROPERTY CONDITION

ASSESSMENT

CITY OF CHARLOTTESVILLE
Department of Public Works Facilities Management
305 4th Street, Northwest
Charlottesville, Virginia 22903
Mr. Tim Breitenbach



**PHYSICAL NEEDS ASSESSMENT
AND LIMITED ADA ASSESSMENT REPORT**
of
HEALTH DEPARTMENT-CHARLOTTESVILLE
1138 Rose Hill Drive
Charlottesville, Virginia 22903

PREPARED BY:

EMG by Joseph Abbate;
10461 Mill Run Circle, Suite 1100
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REVIEWED BY:

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EMG Project #: 116643.15R-001.170
Date of Report: October 3, 2015
On site Date: September 22, 2015

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Item #	Item Description	Unit	Quantity	Unit Cost	Total Cost	Fiscal Year												Total	Balance
						2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024			
1.1	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	10	\$10.00	\$100.00														
1.2	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	20	\$10.00	\$200.00														
1.3	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	30	\$10.00	\$300.00														
1.4	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	40	\$10.00	\$400.00														
1.5	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	50	\$10.00	\$500.00														
1.6	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	60	\$10.00	\$600.00														
1.7	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	70	\$10.00	\$700.00														
1.8	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	80	\$10.00	\$800.00														
1.9	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	90	\$10.00	\$900.00														
1.10	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	100	\$10.00	\$1,000.00														
1.11	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	110	\$10.00	\$1,100.00														
1.12	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	120	\$10.00	\$1,200.00														
1.13	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	130	\$10.00	\$1,300.00														
1.14	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	140	\$10.00	\$1,400.00														
1.15	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	150	\$10.00	\$1,500.00														
1.16	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	160	\$10.00	\$1,600.00														
1.17	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	170	\$10.00	\$1,700.00														
1.18	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	180	\$10.00	\$1,800.00														
1.19	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	190	\$10.00	\$1,900.00														
1.20	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	200	\$10.00	\$2,000.00														
1.21	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	210	\$10.00	\$2,100.00														
1.22	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	220	\$10.00	\$2,200.00														
1.23	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	230	\$10.00	\$2,300.00														
1.24	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft	240	\$10.00	\$2,400.00														
1.25	2014-2015 A2M, total new HIC, access ramp, 3' wide, ramping both sides	sq ft																	

Health Center

15/02/2015

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EXHIBIT B
FIREARMS RIDER

This Firearms Rider (the “**Rider**”) is incorporated into the lease (the “**Lease**”) dated March 25, 2009, by and between Commonwealth of Virginia, by the Charlottesville Health Department (“**Tenant**”) and the City of Charlottesville and the County of Albemarle (“**Landlord**”) with respect to 1138 Rose Hill Avenue, Charlottesville, Virginia 22906. All capitalized terms not otherwise defined in this Rider shall have the same respective meanings as set forth in the Lease.

Landlord hereby acknowledges the following:

1. Possession or carrying, whether open or concealed, of any firearm by any person is prohibited in and on State Offices. For purposes of this Rider, “**State Office**” means the property or premises that is the subject of the Lease, but excludes parking lots or parking facilities. Entry upon a State Office in violation of this prohibition is expressly forbidden. This prohibition does not apply to law-enforcement officers, authorized security personnel, or military personnel, when such individuals are authorized to carry a firearm in accordance with their duties, and when they are carrying the firearm within that authority. It also does not apply to state employees where the employee’s position requires carrying a concealed firearm.

2. Notwithstanding anything in the Lease to the contrary, signs indicating the prohibition against carrying firearms, whether open or concealed, shall be posted at all State Offices and may be posted in or on Common Areas, including parking lots and parking facilities. Signs shall be of a size and design approved by the Commonwealth of Virginia, Department of General Services and shall be paid for and installed by the Commonwealth of Virginia.

LANDLORD: CITY OF CHARLOTTESVILLE

By: _____
Name: _____
Title: _____

Date: _____

COUNTY OF ALBEMARLE

By: _____
Name: _____
Title: _____

Date: _____