

CITY OF MANASSAS PARK - STAFF REPORT/RECOMMENDATION

REQUESTING DEPARTMENT: City Attorney

MEETING DATE: November 17, 2020

SUBJECT/TOPIC: Subordination, Attornment, and Non-Disturbance Agreement for DSS Offices

BACKGROUND: The City entered into a lease with 100 Nadia LLC on December 12, 2018 (the "Lease") for office space in the building constructed on Parcel 1B, PARK CENTER to house the City's Department of Social Services. The owner would now like to refinance its loan on the property and the bank, Burke & Herbert Bank & Trust Company, has asked that the City enter into the attached Subordination, Attornment, and Non-Disturbance Agreement pursuant to Subsection 15A of the Lease.

| | |
|------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| CITY MANAGER APPROVAL: | <hr/> <i>Laszlo A. Palko, City Manager</i> |
| CITY ATTORNEY APPROVAL: Required: <input checked="" type="checkbox"/> Not Required: <input type="checkbox"/> | <hr/> <i>Dean H. Crowhurst</i> <i>Dean H. Crowhurst, City Attorney</i> |

STAFF RECOMMENDATION:

That the Governing Body approve and authorize the City Manager to sign the Subordination, Attornment, and Non-Disturbance Agreement as presented, subject to final City Attorney Review.

ATTACHMENTS:

Subordination, Attornment, and Non-Disturbance Agreement

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement") is made and entered into effective as of the ___ day of _____, 20___, by and among BURKE & HERBERT BANK & TRUST COMPANY ("Lender"), with an address at P.O. Box 268, Alexandria, Virginia 22313-0268, Attention: Khalil Abu-Ghannam, VP; CITY OF MANASSAS PARK, a Virginia municipal corporation ("Tenant"), with an address at 1 Park Center Court, Manassas Park, VA 20111; and 100 NADIA LLC, a Virginia limited liability company ("Landlord"), with an address at 9110 Railroad Drive, Suite 310-A, Manassas Park, VA 20111.

WITNESSETH:

WHEREAS, Lender has conditionally agreed to make a loan ("Loan"), which Loan is to be secured by a certain deed of trust dated on or about the date hereof, to be given by Landlord, and recorded among the land records of Prince William County, Virginia ("Deed of Trust"), encumbering a parcel or parcels of land and the improvements now existing or hereafter erected thereon and having address of 100 Nadia Street, Manassas Park, VA 20111 ("Premises"), which Premises is more particularly described in **Exhibit A** attached hereto and made a part hereof by reference; and

WHEREAS, Landlord and Tenant have previously entered into a certain lease dated December 12, 2018 ("Lease"), wherein Landlord demised to Tenant certain space ("Demised Premises") in the Premises as further described in the Lease; and

WHEREAS, as additional security for the Loan, Landlord shall assign to Lender, on the date of closing of the Loan, pursuant to a certain collateral assignment of leases, rents and profits ("Lease Assignment"), all of Landlord's interest in the Lease and all rents, rentals, fees, profits, payments and other sums of money now or hereafter arising therefrom; and

WHEREAS, Lender has required, as a condition of making the Loan, that Tenant subordinate its Lease to the Deed of Trust, and Tenant and Lender desire to confirm certain agreements and understandings with respect thereto.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Tenant hereby covenant and agree as follows:

1. The Lease is and shall be subject and subordinate in all respects to the Deed of Trust and to all extensions, renewals and modifications of, or substitutions for, the same.
2. So long as Tenant complies with this Agreement and is not in default (beyond any period given Tenant under the Lease to cure such default) in the payment of rent or additional rent

or other sums as provided in the Lease, or in the performance or observance of any other term, covenant or condition of the Lease on Tenant's part to be performed or observed the breach of which would permit Landlord to terminate the Lease, then, except in accordance with the terms of the Lease: (a) Tenant's possession of the Demised Premises and Tenant's rights and privileges under the Lease, or any extensions, renewals or modifications thereof, or substitutions therefore, shall not be diminished or interfered with by Lender; (b) Tenant's occupancy of the Demised Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any extensions, renewals or modifications thereof or substitutions therefor; and (c) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Deed of Trust or the Lease Assignment.

3. Tenant agrees that, without Lender's prior written consent, Tenant will not prepay by more than one (1) month any rent, additional rent or other sums due or to become due under the Lease, and Tenant will not hereafter alter, amend or modify the Lease, without the prior written consent of Lender, which consent shall not be unreasonably withheld.

4. If the Demised Premises shall be transferred by reason of foreclosure of the Deed of Trust or by deed in lieu of foreclosure by any other person or entity owned in whole or in part by Lender, or by such other person or entity designated by Lender (Lender, the foreclosure purchaser, owner, mortgagee, or such other person or entity being hereinafter referred to as "New Owner"), or if in any other way such New Owner succeeds to the interest of Landlord under the Lease, then:

a. Upon the New Owner's deliverance to Tenant of its agreement, in writing, to fulfill all the obligations and liabilities of the Landlord (as that term is defined in the Lease), Tenant shall be bound under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option contained in the Lease, with the same force and effect as if the New Owner were the original landlord under the Lease, and Tenant hereby attorns to the New Owner as its landlord, which attornment is to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon the New Owner's succeeding to the interest of Landlord under the Lease and the New Owner providing said written agreement to Tenant; provided, however, that Tenant shall be under no obligation to pay rent or additional rent (or other sums payable under the Lease) to the New Owner or any subsequent owner until Tenant receives written notice from the New Owner that the New Owner has exercised its right to receive payment of the rent and additional rent (and/or other sums) pursuant to the provisions of the Deed of Trust and/or the Lease Assignment; and

b. Upon the request of the New Owner, and subject to the requirement that the New Owner has agreed in writing to fulfill all the Landlord's obligations and liabilities set forth in the Lease, Tenant will execute a written agreement whereunder Tenant attorns to the New Owner and affirms Tenant's obligations under the Lease and agrees to pay all rentals, additional

rentals and other sums due or to be come due under the Lease as they shall become due and payable to the New Owner; and

c. Consistent with Subsection 15A of the Lease, the New Owner shall be bound to Tenant under the terms of the Lease; provided, however, that in no event, shall the New Owner: (i) be bound by any previous amendment or modification of the Lease or by any previous payment of rent or additional rent (or other sums) for a period greater than one (1) month unless such amendment, modification or prepayment shall have been expressly approved in writing by the Lender; or (ii) be liable for any obligations of Landlord under the lease relating to any period after the New Owner shall have transferred title to any third party.

5. From and after the date hereof, Tenant agrees to send to Lender a copy of any notice or statement under the Lease at the same time Tenant sends any such notice or statement to Landlord under the Lease.

6. Tenant hereby agrees that from and after the date hereof in the event of any act or omission by Landlord under the Lease which would give Tenant the right, either immediately or after the lapse of a period of time, to terminate the Lease, or to claim a partial or total eviction, Tenant will not exercise any right (i) until it has given written notice of such act or omission by certified or registered mail, return receipt requested, addressed to Lender, at Lender's address as set forth herein, or at the last address of Lender furnished to Tenant in writing, and (ii) ten (10) calendar days shall have lapsed following giving of such notice and following the time when Lender shall have become entitled under the Deed of Trust to remedy the same.

7. Nothing contained in this Agreement shall in any way impair, diminish or otherwise affect in any manner the lien created by the Deed of Trust, except as specifically set forth herein.

8. No modification, amendment, waiver or release of any provision of this Agreement or any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

9. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

10. Tenant and Lender each hereby forever waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Lender or Tenant any right (other than in accordance with the express terms of the Lease) to terminate or otherwise adversely affect the Lease and the respective obligations of the landlord and tenant thereunder in the event that any foreclosure proceeding is prosecuted or completed.

11. This Agreement shall become effective upon the closing of the Loan and the recording of the Deed of Trust securing Lender herein and shall not be recorded by Landlord and/or Tenant prior to the date of its effectiveness.

12. In the event of a foreclosure, all rights of first refusal and options to purchase, or similar rights (excluding renewal rights) in favor of the Tenant and relating to the Demised Premises or the Premises provided for in the Lease, at the option of the New Owner, shall automatically terminate.

13. This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

14. If any term or provisions of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

15. Each and every obligation contained in this Agreement except as specifically set forth herein shall be binding upon and inure to the benefit of the respective parties, their heirs, legal representatives, successors and assigns.

16. The person executing this Agreement on behalf of Tenant covenants and warrants that s/he is duly authorized to execute this Agreement on behalf of Tenant herein and that Tenant is otherwise empowered to enter into this Agreement.

17. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

[Signatures follow.]

IN WITNESS WHEREOF, the parties have executed this Subordination, Attornment and Non-Disturbance Agreement as of the day and year hereinabove set forth.

TENANT:

CITY OF MANASSAS PARK, a Virginia municipal corporation

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY OF MANASSAS PARK, to wit:

I HEREBY CERTIFY that on this the ___ day of _____, 20__, before me, the Subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, personally well known to me (or proven satisfactorily) to be the person who executed the foregoing instrument, and acknowledged her/himself to be the _____ of CITY OF MANASSAS PARK, a Virginia municipal corporation, and acknowledged that s/he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Municipality by her/himself as its _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]

Notary Public
Name: _____

My commission expires: _____
My Registration No.: _____

Approved as to form:

Dean Crowhurst, City Attorney

LANDLORD:

100 NADIA LLC, a Virginia limited liability company

By: _____(SEAL)

Name: _____

Title: _____

STATE OF _____
CITY/COUNTY OF _____, to-wit:

I HEREBY CERTIFY that on this the ___ day of _____, 20__, before me, the Subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, who acknowledged her/himself to be the _____ of 100 NADIA LLC, a Virginia limited liability company, personally well known to me (or proven satisfactorily) to be the person who executed the foregoing instrument, and acknowledged that s/he, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Company by her/himself as its _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]

Notary Public

Name: _____

My commission expires: _____

My Registration No.: _____

LENDER:

BURKE & HERBERT BANK & TRUST
COMPANY

By:
(SEAL)

Name: _____
Title: _____

STATE/Commonwealth of _____
CITY/COUNTY OF _____ to wit:

I HEREBY CERTIFY that on this the ___ day of _____, 20__, before me, the Subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, personally well known to me (or proven satisfactorily) to be the person who executed the foregoing instrument, and acknowledged her/himself to be the _____ of BURKE & HERBERT BANK & TRUST COMPANY, and acknowledged that s/he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Bank by her/himself as its _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Seal]

Notary Public
Name: _____

My commission expires: _____
My Registration No.: _____

EXHIBIT "A"

Exhibit A Property Description

All that certain real property lying and being situated in Prince William County, Virginia, and more particularly described as follows: