

INTRODUCED: March 14, 2022

AN ORDINANCE No. 2022-088

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment to Deed of Lease between Richmond VA II SGF, LLC, as lessor, and the City of Richmond, as lessee, for the purpose of providing office and storage space for the Office of the General Registrar at 2134 West Laburnum Avenue.

\_\_\_\_\_  
Patrons – Mayor Stoney and Ms. Lambert

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

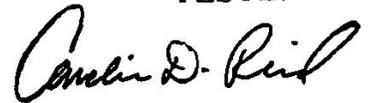
PUBLIC HEARING: MAR 28 2022 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a First Amendment to Deed of Lease between Richmond VA II SGF, LLC, as lessor, and the City of Richmond, as lessee, for the purpose of providing office and storage space for the Office of the General Registrar at 2134 West Laburnum Avenue. Such First Amendment to Deed of Lease shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

**A TRUE COPY:  
TESTE:**



**City Clerk**

AYES: 7 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: MAR 28 2022 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

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# CITY OF RICHMOND

## INTRACITY CORRESPONDENCE

### O&R REQUEST

**DATE:** February 10, 2022

**EDITION:** 1

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor

**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer

**THROUGH:** Sharon L. Ebert, DCAO – Planning & Economic Development Portfolio

**FROM:** Keith Balmer, General Registrar

**RE:** Amendment to City’s Lease of Office/Storage Space at 2134 W. Laburnum Ave.

**ORD. OR RES. No.** \_\_\_\_\_

**PURPOSE:** To authorize the Chief Administrative Officer to execute, on behalf of the City, the First Amendment to Deed of Lease (the “Lease Amendment”) by and between the City (as Tenant) and Richmond VA II SGF, LLC (as Landlord), a copy of which is attached hereto, in order to amend that certain Deed of Lease by and between the City and the Landlord’s predecessor in interest (DAR Enterprises, LLC) dated May 1, 2020 and pursuant to which the City leases certain office/storage space located at 2134 W. Laburnum Ave for use by the Registrar’s Office.

**REASON:** An ordinance is necessary to authorize the contemplated Lease Amendment.

**RECOMMENDATION:** The City Administration recommends approval.

**BACKGROUND:**

On May 1, 2020 the City entered into a 10 year lease, as Tenant, in order to enable the Registrar Office’s use of certain office/storage space located at 2134 W. Laburnum Ave. (the “Lease”). The Initial Premises leased by the City consists of 30,958 square feet and, pursuant to the Lease, on Jan. 1, 2022 (i) such premises was set to expand to a total of 38,400 s.f. (the “Expanded Premises”) and (ii) the City’s rent was set to increase by appx. \$214,126 per annum (\$17,843.83 per month) – i.e., from a rate of \$457,874 per annum to a rate of \$672,000 per annum. In Fall 2021, it came to Landlord’s attention that the third-party tenant occupying the space set to be added to the City’s leased premises may be unable to vacate such space by Dec. 31, 2021 and, therefore, intended to holdover a few additional months. Due to the changing circumstances, the City and Landlord negotiated the Lease Amendment in order to

delay the expansion of the City's leased premises until April 1, 2022 and to delay the City's obligation to pay increased rent until April 1, 2022 (or, in the event that Landlord has not caused its current tenant to completely vacate the Expanded Premises as of April 1, 2022, then the City's obligation to pay increased rent will be further delayed until such date that the current tenant vacates 100% of such space).

**FISCAL IMPACT / COST:** The Lease increases the City's monthly rent payments by \$17,843.83 per month (i.e., from a rate of \$457,874 per annum (\$38,156.16 per month) to a rate of \$672,000 per annum (\$56,000 per month)) beginning on Jan. 1, 2022. The Lease Amendment delays the increase by at least three months (possibly longer if the entirety of the Expanded Premises is not available on April 1, 2022), which equates to a City savings of at least \$53,531.49.

**FISCAL IMPLICATIONS:** N/A

**BUDGET AMENDMENT NECESSARY:** No

**REVENUE TO CITY:** No direct revenue to the City; however, the City will realize a cost savings of at least \$53,531.49 – see Fiscal Impact/Cost section.

**DESIRED EFFECTIVE DATE:** Upon adoption

**REQUESTED INTRODUCTION DATE:** February 28, 2022

**CITY COUNCIL PUBLIC HEARING DATE:** March 14, 2022

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:**

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** None

**AFFECTED AGENCIES:** Economic Development, Registrar's Office, City Attorney's Office

**RELATIONSHIP TO EXISTING ORD. OR RES.:** Amendment to Lease originally authorized via Ord. No. 2020-099

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** First Amendment to Deed of Lease

**STAFF:** Matthew A. Welch, DED

## FIRST AMENDMENT TO DEED OF LEASE

**THIS FIRST AMENDMENT TO DEED OF LEASE** (this “Amendment”) is entered into as of the \_\_\_ day of December, 2021 (the “Effective Date”) by and between **RICHMOND VA II SGF, LLC**, a Delaware limited liability company (“Landlord”), and **THE CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (“Tenant”).

### WITNESSETH:

**WHEREAS**, Landlord, as successor in interest to DAR Enterprises, LLC, and Tenant entered into that certain Deed of Lease dated May 1, 2020 (the “Lease”), as authorized by Richmond City Council Ordinance No. 2020-099, pursuant to which Lease Landlord leased to Tenant certain premises consisting of 30,958 rentable square feet (the “Initial Premises”) in the building (the “Building”) located at 2134 West Laburnum Avenue, City of Richmond, Virginia (the “Property”), as depicted on Exhibit A attached to Lease.

**WHEREAS**, pursuant to Section 1(a) of the Lease, on January 1, 2022 (the “Expanded Premises Commencement Date”), the Initial Premises was to be expanded to include a total of 38,400 square feet located in the Building as more particularly shown on Exhibit A-1 attached to the Lease (the “Expanded Premises”).

**WHEREAS**, the Expanded Premises is currently leased to another tenant (the “Current Tenant”), and Tenant has consented to the extension of the Current Tenant’s lease until March 31, 2022 in order to provide Current Tenant additional time to surrender Expanded Premises to Landlord.

**WHEREAS**, Landlord and Tenant desire to amend the Lease to, among other things, delay the Expanded Premises Commencement Date, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the aforesaid premises and the other agreements and covenants hereafter set forth and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. Incorporation of Recitals. The above recitals are hereby incorporated into this Amendment as if fully set forth herein. As used herein the term “Lease” shall mean the Lease as amended by this Amendment.

2. Definitions. All capitalized terms used in this Amendment shall have the meanings assigned to them in the Lease unless otherwise specified herein.

3. Expanded Premises Commencement Date. The Expanded Premises Commencement Date is hereby amended to April 1, 2022. In the event that the Current Tenant holds over or remains in possession of any portion of the Expanded Premises beyond March 31, 2022, Landlord shall cause the Current Tenant to surrender possession of the Expanded Premises, including without limitation by availing itself of all rights and remedies under the lease with the Current Tenant, and at law. Landlord’s failure to cause the Current Tenant to surrender possession

of all portions of the Expanded Premises before April 1, 2022 shall constitute a default under the Lease, notwithstanding the cure period set forth in Section 14 of the Lease; provided, however, that if the Current Tenant shall on or before April 1, 2022 surrender to Landlord those portions of the Expanded Premises identified on Exhibit 1, attached hereto, as “Switch Office” and “Switch Storage,” consisting of a total of approximately 3,375 rentable square feet (1,325 rsf Switch Office and 2,050 rsf Switch Storage), but not the 4,072 rsf portion of the Expanded Premises identified as “Switch” on Exhibit 1 (the “Switch Area”), hereinafter referred to as a “Current Tenant Partial Holdover,” then Tenant shall only have the right to terminate the Lease pursuant to subsection 15(b) thereof if Landlord’s failure to cause the Current Tenant to surrender possession of the Switch Area persists beyond May 31, 2022. In the event of a Current Tenant Partial Holdover, Tenant agrees to provide the Current Tenant with reasonable access through the Switch Office to the Switch Area and, for removal of Current Tenant’s equipment, to the outdoor loading area attached to the Switch Office (the “Switch Area Access”) until either such time as the Current Tenant has surrendered the Switch Area to Landlord or May 31, 2022, whichever occurs first, but only under the following conditions:

(i) Tenant shall only permit Switch Area Access at the following times:  
(a) during its regular business hours and during the Current Tenant’s “maintenance window” of 12:00 am to 6:00 am, but only to the extent such access is consistent with timeframes set forth on a weekly work schedule to be submitted by Current Tenant to Tenant no later than the Friday preceding the week to which each such weekly schedule pertains; at such other times as may be requested by Current Tenant not less than twenty-four (24) hours in advance and reasonably approved by Tenant; (c) when Current Tenant immediately notifies Tenant of its need to perform emergency repairs and service, which notice Current Tenant shall give prior to entering the Expanded Premises, and which emergency access Tenant shall not permit unless Current Tenant has submitted to Tenant the names of all individuals who might enter the Expanded Premises for emergency Switch Area Access by March 31, 2022.

(ii) The Switch Area Access shall not be available to Current Tenant for removal of its equipment during voting hours, to be determined by Tenant at its sole discretion, as of the date on which Tenant commences early voting in connection with the June 2022 primary election (currently anticipated to be May 6, 2022), which Tenant intends to conduct within the Switch Office.

(iii) Switch Area Access shall be via keycard. The parties acknowledge that the current keycard system located in the Expanded Premises is owned by Current Tenant. On or before March 31, 2022, Landlord shall cause Current Tenant to program the existing keycard system to restrict Switch Area Access so that Current Tenant may only access the Switch Area via the Switch Office, and so that Switch Area Access is limited to those individuals whose names have been submitted to Tenant by March 31, 2022.

(iv) Current Tenant shall email all submittals and notices relating to Switch Area Access to Tenant at the following email addresses: Keith.Balmer@richmondgov.com; Brian.Prince@richmondgov.com.

(v) Landlord shall release and discharge Tenant and its officers, employees, and agents, including, without limitation, members of the City of Richmond Electoral Board, the City of Richmond General Registrar, and the employees and agents of the City of Richmond General Registrar (“Tenant Parties”), from all liability, claims, demands, actions, and causes of action for the following: (a) any injury to property or person suffered by Landlord, or any of Landlord’s officers, employees, agents, invitees, or licensees; (b) any breach of the Lease, and (c) any violation of the Laws, that arises from any act or omission of Current Tenant during the Current Tenant Partial Holdover.

(vi) Landlord shall (a) assume or ensure that Current Tenant assumes Tenant’s obligations under subsection 9(b) of the Lease at the sole cost of either Landlord or the Current Tenant or both with respect to the Switch Area during Current Tenant Partial Holdover, (b) to the extent not already so obligated under the Lease, (1) indemnify Tenant for its costs to repair, replace, or otherwise remedy any property of Tenant, and (2) restore to its prior condition any portion of the Expanded Premises at no cost to Tenant, when such costs or damage in Tenant’s reasonable judgment arise from the acts or omissions of Current Tenant during Current Tenant Partial Holdover, and (c) indemnify the Tenant Parties for losses resulting from personal injury suffered by the Tenant Parties and relating to or arising from any act or omission by Current Tenant during Current Tenant Partial Holdover.

(vii) In the event of Current Tenant Partial Holdover, Landlord shall indemnify the Tenant Parties against any liability and Indemnifiable Loss arising out of any actual or alleged judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding (collectively, any “Proceeding”) initiated by the Current Tenant or relating to or arising out of any act or omission by the Current Tenant or its officers, employees, agents, invitees, and licensees during the Current Tenant Partial Holdover. In this paragraph, “Indemnifiable Loss” means (a) any amount awarded in, or paid in settlement of, any Proceeding, including any interest, and (b) any reasonable out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.

(viii) Landlord shall (a) cause Tenant to be named as an “additional insured lessee” on Landlord’s commercial general liability policy, which policy shall (1) contain a waiver of subrogation endorsement, and (2) be primary and noncontributory with respect to insurance policies or self-insurance programs maintained by the City, and (b) on the first day of the Current Tenant Partial Holdover, and on any subsequent day of the Current Tenant Partial Holdover as Tenant may request, cause the Current Tenant to deliver a certificate of insurance naming Landlord as an “additional insured” on Current Tenant’s commercial general liability policy, which certificates Landlord shall provide Tenant upon Landlord’s receipt thereof.

In no event shall Landlord agree to any further extension of the Lease with the Current Tenant without Tenant's prior written consent, which may be granted or withheld in Tenant's sole discretion.

4. Payment of Expanded Base Rent. The first two paragraphs of Section 2(a) of the Lease are hereby deleted and replaced in their entirety with the following:

Commencing on September 1, 2020 (the "Rent Commencement Date"), and throughout the Term until the later of Expanded Premises Commencement Date and the first date by which the Current Tenant has both surrendered possession of the entire Expanded Premises and removed therefrom any of its property of which Tenant has not elected to assume ownership (the "Current Tenant Vacation Date"), Tenant covenants and agrees to pay to Landlord an Initial Base Rent (the "Initial Base Rent") in equal monthly installments on the first day of each month, in advance, in the amount of Four Hundred Forty-Eight Thousand Eight Hundred Ninety-Six and No/100 Dollars (\$448,896.00) per annum in equal monthly payments of \$37,408. Such Initial Base Rent amount shall increase by two percent (2%) on June 1, 2021 to total \$457,874.00, of which amount Tenant shall only owe \$381,561.70 to Landlord, to be paid by Tenant to Landlord in equal monthly installments of \$38,156.17 on the first day of each month, in advance, from June 1, 2021 through at least March 2022.

Commencing on the later in time of the Expanded Premises Commencement Date and the Current Tenant Vacation Date and throughout the balance of the Term, Tenant covenants and agrees to pay to Landlord an Expanded Base Rent (the "Expanded Base Rent") in equal monthly installments on the first day of each month, in advance, in the amount of Six Hundred Seventy-Two Thousand and No/100 Dollars (\$672,000.00) per annum in equal monthly payments of \$56,000, except that if the Current Tenant Vacation Date is on or after April 1, 2022, Landlord shall prorate Tenant's monthly payments of Base Rent as of April 1, 2022 by applying only the Initial Base Rent to that number of days between March 31, 2022 and the Current Tenant Vacation Date and applying the Expanded Base Rent to the remainder of the Term. The Expanded Base Rent amount shall increase by 2% annually with the occurrence of each and every April 1<sup>st</sup> occurring after the Expanded Premises Commencement Date during the Term.

5. Walkthrough. Landlord agrees to provide Tenant the ability to perform an additional walkthrough of the Expanded Premises no later than February 28, 2022 to determine whether Tenant would like to assume ownership of any equipment owned by the Current Tenant and located in the Expanded Premises.

6. Amendment of Section 10(a). The parties acknowledge that, pursuant to Section 10(a) of the Lease, Landlord and Tenant agreed to examine the electrical requirements of Tenant with respect to the generator required by Tenant in March 2021. The final four sentences of Section 10(a) of the Lease are hereby deleted and replaced in their entirety with the following:

As of the Expanded Premises Commencement Date, Tenant shall have the option to either (a) provide, install, operate and maintain a generator to provide backup power services for the Building; (b) have Landlord, provide, install, operate and maintain a generator capable of providing backup power services for the Building, which generator will be 350 kw or smaller, depending on the parties' determination of Tenant's typical and expected consumption of electricity as described below; or (c) occupy the Expanded Premises without preserving, installing, or having a generator installed therein. Landlord and Tenant shall examine the electrical requirements of Tenant with respect to the necessary size of any generator Tenant may require on or before February 1, 2022, and final determination of the size of the generator required by Tenant shall be subject to a final walkthrough with the Tenant's representatives, which walkthrough shall occur on or before February 8, 2022. Tenant shall elect one of the foregoing options (a), (b) or (c) on or before February 28, 2022. If Tenant elects option (b), Tenant shall pay as Additional Rent, beginning on the later of the Expanded Premises Commencement Date and the Current Tenant Vacation Date, Landlord's costs for maintenance, repair and testing of such generator (the "Generator Reimbursement"), subject to the following: (i) the Generator Reimbursement shall increase by two percent (2%) annually as of each and every April 1<sup>st</sup> occurring after the Expanded Premises Commencement Date during the Term; (ii) in the event Tenant requires a 350kw generator, the Generator Reimbursement shall not to exceed Three Thousand Eight Hundred Thirty-Two and 00/100 Dollars (\$3,832.00) per month; and (iii) if the parties determine a generator smaller than 350 kw will provide sufficient backup power services for the Building, Landlord shall purchase a smaller generator and provide a reduced and reasonable maximum amount for the monthly Generator Reimbursement. In the event the Current Tenant Vacation Date does not occur on the first day of a month, Tenant shall only owe a prorated sum for its first payment of the Generator Reimbursement. In no event shall Tenant use the Premises as a computer server room or computer mining space.

7. No Default. Each of Landlord and Tenant hereby affirm to each other that to best of its knowledge without inquiry as of the Effective Date, no breach, default, event of default, or other act, error, or omission which, with the giving of notice or passage of time or both would constitute a breach, default, or event of default by such party has occurred and is continuing under the Lease beyond any applicable notice or cure period.

8. No Third-Party Beneficiaries. Notwithstanding any other provision of this Amendment or the Lease, Tenant and Landlord hereby agree that (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Amendment or the Lease, as amended; (ii) the provisions of the Lease, as amended, are not intended to be for the benefit of any individual or entity other than Tenant and Landlord; (iii) no individual or entity shall obtain any right to make any claim against Tenant and Landlord under the provisions of the Lease, as amended; and (iv) no provision of the Lease, as amended, shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this paragraph, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, subvendors,

assignees, licensors and sublicensors, regardless of whether such individual or entity is named in this Amendment or the Lease, as amended.

9. Affirmation of Lease Terms. Except as modified by this Amendment, Landlord and Tenant each hereby ratify the Lease and agree that the Lease shall remain unchanged and shall continue in full force and effect. In the event there is any conflict between the terms of the Lease and the terms set forth in this Amendment, the terms specifically set out in this Amendment shall control. From and after the Effective Date, any and all references to “the Lease” or “this Lease” in the Lease shall mean the Lease as modified by this Amendment.

10. Mutual Authorization Representation. Each of Landlord and Tenant hereby represent and warrant to each other that: (a) this Amendment (and each term and provision hereof) has been duly and appropriately authorized and executed by such party through proper written corporate or limited liability company action and approval; and (b) no additional consent, agreement, or approval is required with respect hereto.

9. Miscellaneous. The submission of an unsigned copy of this Amendment to Tenant shall not constitute an offer. Landlord and Tenant each agree that this Amendment (i) shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and assigns, (ii) shall be governed by and construed in accordance with the laws of the State of Virginia, (iii) shall constitute the entire agreement between the parties relating to the subject matter hereof, all prior negotiations, agreements, and understandings, and (iv) shall become effective and binding upon execution and delivery by both Landlord and Tenant.

10. Signature and Counterparts. Landlord and Tenant each agree: (a) no further approvals or consents are required and that it has full right and authority to execute this Amendment; (b) that the individual executing this Amendment on its behalf has the authority to bind it; (c) execution and delivery of this Amendment via electronic transmission or other electronic means shall be binding; (d) photocopies, facsimile transmissions, electronic images or copies (such as docusign or pdf), shall be valid, binding, effective and enforceable the same as originals for all purposes, and may be so admitted in any judicial proceeding, regulatory proceeding or arbitration, and in making proof of this Amendment; it shall be unnecessary to produce the original hereof or any or all original signature pages, and (e) this Amendment may be executed in two (2) or more counterparts, all of which together shall constitute but one and the same agreement.

11. Sovereign Immunity. Nothing in this Amendment shall be construed as a waiver of the sovereign immunity granted to Tenant by the Commonwealth of Virginia Constitution, statutes, and applicable case law.

[Remainder of Page Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed as of the dates respectively listed below.

**LANDLORD:**

RICHMOND VA II SGF, LLC,  
a Delaware company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT:**

CITY OF RICHMOND,  
a Municipal Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Authorized by Ord. No. \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
City Attorney's Office

Approved as to terms:

\_\_\_\_\_  
Department of Economic Development & Planning

*[SIGNATURE PAGE TO FIRST AMENDMENT TO LEASE AGREEMENT]*

**EXHIBIT 1**

