

CITY OF WASHINGTON

PLANNING & DEVELOPMENT DEPARTMENT

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MEMORANDUM

TO: Mayor Manier and City Council
FROM: Jon R. Oliphant, AICP, Planning & Development Director
SUBJECT: Special Census Temporary Space Lease Agreement
DATE: September 12, 2017

Summary: Staff seeks approval of a short-term lease agreement with American Commercial Realty, owner of Cherry Tree Shopping Center. The lease would be for a minimum of three months, starting in mid-October, with two optional one-month extensions. The office space is located on the lower level of Cherry Tree next to Kroger and would be at a rate of \$800 per month plus utilities.

Background: As part of the partial Special Census, the Census Bureau requires each municipality to supply temporary office space based on the anticipated space needs for the individual project. In our case, the Census Bureau requires a minimum of 800 square feet be allocated and would also need the City to provide tables, chairs, filing cabinets, and direct phone lines. The office space must be solely available to the Census Bureau and the temporary employees six days a week and must meet Americans With Disabilities (ADA) regulations. It also needs to have an open floor plan to provide the supervisor the opportunity to quickly hear about and address any staff questions or concerns and which also enables the supervisor to monitor whether people entering the Special Census office have the proper authorization to do so.

Staff and the Census Bureau first reviewed any potential publicly-owned spaces that may fit the loose square footage needs. It was quickly determined that there were no public spaces available that met the criteria and/or they could not be available during the necessary timeframe. The attention then turned to any privately-owned spaces. Of those currently available, the space on the lower floor of Cherry Tree Shopping Center next to Kroger was the clear preference of the Census Bureau due to its open floor plan. This space is approximately 1,900 square feet and is ADA-accessible. The shopping center is owned by American Commercial Realty (ACR), which has offered a monthly lease rate of \$800 plus utilities, which is considerably less than if it were offered to a business use.

Staff seeks authorization to enter into a short-term lease with ACR for this space at \$800 per month plus utilities for a minimum of three months starting in mid-October. The lease would also allow for two optional one-month extensions should the Census Bureau need the space longer than the 90 days it currently anticipates. The lease agreement is enclosed. This is scheduled for approval at the September 18 City Council meeting.

Enclosure

TEMPORARY LEASE AGREEMENT

This Lease (the "Lease") is made and entered into this ____ day of September, 2017 (the "Effective Date"), by and between **Cherry Tree Plaza, LLC.** with an address at 300 Avenue of the Champions, Suite 140, Palm Beach Gardens, FL 33418 ("Landlord"), and **The City of Washington, IL** ("Tenant"), with an address at 301 Walnut Street, Washington, IL 61571.

1. **Premises.** In consideration of the mutual covenants, conditions and agreements in this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the following described premises ("Premises") in "as-is" condition: 30 Cherry Tree Shopping Center, Washington, IL 61571 consisting of approximately 1,950 square feet further defined in the two pages of Exhibit A.
2. **Term.** The term of this Lease ("Term") shall begin on October 16, 2017 ("Commencement Date") and end on January 15, 2018 ("Expiration Date"). Landlord shall deliver possession of the Premises to Tenant for preparation, cleaning, and general setup on the later to occur of a) the Commencement Date or b) the delivery of Tenant's required insurance certificate as specified in paragraph 11 below.
3. **Rent.** Total rent ("Rent") for the Term is Two Thousand Four and no/100 (\$2,400.00) Dollars, payable to Landlord at the above address due upon execution of this Lease. The Tenant must pay a late charge of ten percent (10%) as additional rent for each payment that is more than five (5) days late. This late charge is due with the rent payment. The Tenant must also pay a fee of five hundred and 00/100 (\$500.00) Dollars as additional rent for any dishonored check.
4. **Personal Property.** Tenant shall furnish at his own expense all personal property to be used by Tenant on the Premises.
5. **Permitted Use.** Tenant shall use the Premises only for the purpose of office use in support of U.S. Government services related to the Census Bureau (the "Permitted Use"). Tenant shall carry on no other business on said Premises without the prior written consent of Landlord. Tenant agrees to not use the Premises for retail sales, violate any tenant exclusives or restricted uses including but not limited to sales of gasoline, diesel fuel and motor oil products, a food store or a food department, or for the sale for off premises consumption of groceries, meats, dairy products, or bakery products, or any of them.
6. **Utilities.** Landlord shall provide Tenant with the following utilities used in the Premises during the Term: electricity, gas, water and sewer. Tenant shall pay to Landlord, by no later than October 15, 2017, the sum of \$500.00 (the "Utilities Deposit") towards the cost of such utilities. If the cost of such utilities used in the Premises during the Term exceeds the amount of the Utilities Deposit, Landlord shall bill Tenant for any such excess amounts within sixty (60) days following the Expiration Date, and Tenant shall forward payment to Landlord for any and all such excess amounts within thirty (30) days of Tenant's receipt of such bill. If the Utilities Deposit exceeds the actual cost of utilities used in the Premises during the Term, Landlord shall reimburse Tenant for such excess amount within sixty (60) days following the Expiration Date. Tenant shall have the right to request copies of all relevant utility bills from Landlord. The

obligations of Tenant to reimburse Landlord for the cost of utilities in excess of the Utilities Deposit, and Landlord to refund to Tenant any excess, shall survive the expiration of the Term of this Lease.

7. **Subletting.** Tenant shall not sublet the whole or any part of the Premises without first obtaining the prior written consent of Landlord.

8. **Maintenance and Repairs.** Tenant has examined the Leased Premises and has entered into this Lease without any representation on the part of the Landlord as to the condition thereof. Tenant accepts the Premises in condition, 'as-is' and agrees to do all work necessary at its own cost and expense to prepare the Premises for its use and occupancy. Tenant shall at all times keep and maintain the Premises in good condition, order and repair. Any such damage beyond that of reasonable and normal wear and tear or willful misconduct of Tenant shall cause the Tenant to be held liable. No alterations shall be made to the building structure or systems of the Premises without the express written consent of the Landlord. Any such alterations will become permanent attachments to the Premises and property at Landlord at Landlord's election, otherwise Landlord will direct Tenant to remove such improvements at Tenant's sole cost and expense.

9. **Liens.** Tenant shall not permit any liens to be filed against the Premises on account of the furnishing of any labor, material or supplies, or for any other cause or reason. In the event liens are filed, then Tenant shall promptly cause the same to be released, bonded or satisfied in full within ten (10) days of the date of such filing.

10. **Indemnification.** Tenant shall indemnify and hold harmless Landlord from and against any and all claims, actions, damages, liability and expenses in connection with loss of life or personal injury arising from or out of Tenant's occupancy or use of the Premises or any part thereof, resulting from the gross negligence or willful misconduct of Tenant, its agents, contractors or employees. Notwithstanding the foregoing, Tenant shall have no obligation to indemnify or hold Landlord harmless against claims for loss of life or personal injury arising in whole or in part out of or by reason of any act, negligence, or fault of Landlord or of its agents, servants, or employees.

11. **Tenant's Insurance.** Tenant shall carry, at its own expense, (i) commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence, with a \$2,000,000 general aggregate for bodily injury and property damage, and (ii) all risk property insurance covering Tenant's trade fixtures, inventory and other personal property for the full replacement cost thereof. Landlord and Landlord's property management company shall be named as an additional insured on the aforesaid liability insurance and Landlord shall be provided with evidence confirming such coverage.

12. **Landlord's Insurance.** Landlord shall carry commercial property insurance, including special form perils endorsement, insuring the building of which the Premises is a part, in an amount not less than the full replacement cost. In addition, Landlord shall carry commercial general liability insurance for the property of which the Premises is a part, in at least the same amounts required of Tenant.

13. **Hazardous Materials.** Tenant agrees not to maintain, keep, store or permit the maintenance or storage of any dangerous, flammable or hazardous material on the Premises (other than reasonable and customary amounts as permitted under existing fire and safety rules and regulations) and further agrees to comply with all fire and safety rules and regulations, provided such compliance does not require Tenant to install or modify any fire protection, fire detection or fire alarm systems in the Premises. Any such installations or modifications shall be the sole responsibility of the Landlord.

14. **Casualty.** If all or any part of the Premises shall be damaged or destroyed by fire, earthquake or other casualty so as to render the Premises untenable in Tenant's sole opinion, then this Lease shall terminate, at the written option of Landlord or Tenant, from the date of such casualty, and upon such notice Tenant shall at once surrender the Premises and all interest therein to the Landlord, and shall not be liable for any further payments of Rent as of the date of such casualty. Any portion of the Rent applicable to the time period after the date of such casualty shall be refunded to Tenant.

15. **Quiet Enjoyment.** Landlord represents and warrants that Landlord has the right, power and lawful authority to enter into this Lease for the full Term hereof. Tenant, upon paying the Rent required under this Lease, shall peaceably and quietly hold and enjoy the Premises during the full Term hereof.

16. **Signage.** Beginning upon the mutual execution and delivery of this Lease Tenant shall have the right to place a professionally prepared banner or permanent sign containing Tenant's trade name on the front façade. Upon the removal of the sign at the end of the Term, Tenant will make all necessary repairs to return the building to its original conditions prior to the installation of signs, reasonable wear and tear excepted. All signage rights granted by Landlord are subject to governmental approval and are not a condition to this Lease.

Upon Landlord's notification, Tenant agrees to display a single "For Lease" or "For Sale" sign, not to exceed 36" x 24" (such sign to be provided by Landlord) in the showroom window of the Premises, and further agrees to make the Premises available for showing by Landlord or Landlord's broker upon not less than 24 hours prior notice. Any such sign shall not unreasonably interfere with Tenant's operation or the visibility of the Premises.

17. **As Is.** The Tenant has inspected the Leased Premises and agrees that the Leased Premises are in satisfactory condition. Tenant accepts the Leased Premises 'as is'.

18. **Default.** In the event Tenant shall be in default in the payment of any installment of Rent herein reserved more than five (5) days following written notice from Landlord, or in the event Tenant shall be in default in the performance of any other of the terms, covenants, conditions or provisions herein contained binding upon Tenant after Landlord has given Tenant fifteen (15) days prior written notice of such non-performance, Landlord shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease, to re-enter and take possession of the Premises, peaceably or by force, and to remove any property therein, without liability for damage to, and without obligation to store, such property. In the event Landlord shall be in default in the performance of any of the terms, covenants, conditions or provisions herein

contained binding upon Landlord after Tenant has given Landlord fifteen (15) days prior written notice of such non-performance, Tenant shall have the right (in addition to all other rights and remedies provided by law) to terminate this Lease.

19. **Notices.** Any notice required or permitted under this Lease shall be in writing and, except as specifically provided otherwise herein, shall be deemed to have been duly given and delivered (a) one (1) business day after the date on which the same has been delivered prepaid to a national courier service guaranteeing next day service, or (b) three (3) days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, in each case addressed to the party to whom such notice is given at the address set forth herein.

20. **Attorneys' Fees.** If either Landlord or Tenant institutes any action or proceeding against the other to enforce any provision of this Lease, the non-prevailing party shall reimburse the prevailing party for all reasonable costs and expenses incurred by the prevailing party in the performance of this Lease, including court costs, expenses and reasonable attorneys' fees.

21. **Entire Agreement.** There are no oral or written agreements or representations between Landlord and Tenant except as expressly set forth in this Lease. No modifications of this Lease will be binding upon Landlord or Tenant unless in writing and signed by each party. The terms, covenants and conditions contained herein shall inure to the benefit of, and be binding upon, Landlord and Tenant, and their respective heirs, successors and assigns.

22. **Severability.** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

23. **Governing Law.** This Lease shall be construed in accordance with the laws of the state in which the Premises is located.

24. **Force Majeure.** Neither the Landlord nor the Tenant shall be liable for failure to perform any obligation under this Lease in the event it is prevented from so performing by strike, lockout, breakdown, accident, act of terrorism, order or regulation of or by any governmental authority or failure to supply or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services or because of war or other emergency or for any other cause beyond its reasonable control.

25. **Holdover.** If Tenant should hold over after the expiration or earlier termination of the Term without Landlord's consent, such tenancy shall (without limitation of any of Landlord's rights or remedies therefore) be one at sufferance at a minimum monthly rent equal to three hundred percent (300%) of the monthly Rent payable hereunder, prorated for the actual number of days Tenant continues to occupy the Premises after the expiration or earlier termination of the Term.

26. **Brokers.** The parties acknowledge that there are no other Brokers involved in this transaction except American Commercial Realty Corp., representing Landlord. Landlord shall pay a Commission to Brokers pursuant to a separate Agreement between Landlord and Brokers.

27. **Time of the Essence.** Time is of the essence with respect to the performance of each, every, and all of the terms, conditions, promises and provisions of this Lease.

28. **Renewal Option.** Provided Tenant has conformed to the Lease as provided herein, by giving written Notice to Landlord no less than 45 days prior to expiration of the current term, Tenant may extend this Lease up to two (2) times, for one month each (the "Renewal Option Period"). The first option shall begin on January 16th, 2018 and expire February 15th, 2018 and the second option shall begin February 16th, 2018 and expire March 15th, 2018. Tenants' exercise of the second option is contingent on its execution of the first option. The Rent shall be Eight Hundred and 00/100 (\$800.00) dollars per Renewal Option Period and shall be paid when Notice is given to Landlord from Tenant of its exercise of the Renewal Option.

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IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

Cherry Tree Plaza, LLC

By: RB Cherry Tree, LLC, its managing member

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

City of Washington, IL

By: _____

Date: _____

Tax ID#: _____

Witness: _____

EXHIBIT "A" **Cherry Tree Shopping Center**

