



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

August 11, 2020

City Council President Joseph P. Lopes and
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Lopes and Members of the City Council:

I respectfully submit for Council's consideration a proposed Order authorizing the Mayor on behalf of the Department of Community Services' to enter into a lease agreement with David St., LLC (Acorn Management Co. Inc.) to house furniture donations for the department's Fresh Start Program. The rationale for this request, as detailed in the attached memorandum from the Director of Community Services, Cynthia Wallquist, is that Fresh Start has outgrown its current shared storage section at 67-75 David Street and requires its own dedicated space at the same location.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Mitchell", is written over the word "Sincerely,".

Jonathan F. Mitchell
Mayor

JFM/sds

cc: Community Services



City of New Bedford Department of Community Services
Office of Human Services

To: Mayor Jonathan F. Mitchell

From: Cynthia Wallquist
Director of Community Services

Date: August 7, 2020

Re: Fresh Start Program Warehouse Lease for "*Shelley's Place*"

Referenced herein is a request for approval by the City Council for the Department of Community Services to enter into a lease agreement with David St., LLC (Acorn Management Co., Inc.) to house furniture donations for the department's Fresh Start Program. I have been advised that because the value of this one-year lease is under \$35,000, there is no need to solicit proposals under c.30B.

Background

In September of 2013, Council on Aging and Department of Community Services staff convened a small group of agency representatives to discuss the growing need to assist elders facing challenges, such as:

- Homeowners who downsized and are unable to reduce the amount of "stuff", organize or manage their belongings
- Tenants forced to move due to eviction
- Homeowners facing foreclosure

The group formalized, named itself "**Fresh Start**", expanded its service area to Greater New Bedford communities and include person with disabilities of all ages. Its membership now includes agency representatives from:

- Acushnet Council on Aging
- Bristol Elder Services
- Certified Appraiser
- Certified Mediators
- Coastline Elderly Services, Inc.
- Contracted mental health specialists and social workers
- Dartmouth Council on Aging
- Fairhaven Health Dept.
- Lifestream
- MA Department of Developmental Disabilities Services
- Mattapoisett Council on Aging
- Mayor's Housing Task Force
- Movers
- New Bedford Health Department

- New Bedford Housing Authority
- PACE
- South Coastal Counties Legal Services
- Tenancy Prevention Partnership
- The Bridge: A Center for Hope and Healing
- The Inter-Church Council of Greater New Bedford
- Westport Council on Aging

As the group developed its mission, it increasingly encountered clients:

- with furniture in disrepair or discarded due to infestation
- with little or no furnishings (i.e. fire victims or formerly homeless or relocated from a disaster)
- who downsized from large private homes to studio apartments in need of furniture that “fit”
- with furniture not suited for their immediate needs; i.e. a patient returning from a rehabilitation facility needs a hospital bed or recliner

“Shelley’s Place” Furniture Storage

As the team grew, we began receiving offers from team members to donate their unused goods to help clients. Word of mouth among team members and “sister agencies” resulted in calls from area residents wanting to help by donating their furnishings. Initially, one of the team’s movers offered to store donations in his North End storage space and deliver them to those in need. When part of that space was destroyed by fire, remaining donations were moved to a unit in the south End and shared space with other groups under the auspices of the Inter-Church Council. Our area was named “**Shelley’s Place**” in memory of our department’s late staff member, Shelley Carvalho, who was instrumental in getting the Fresh Start Program off the ground.

The number of donations and items stored have now resulted in Fresh Start outgrowing its section and needing its own dedicated space at the same location. The program averages 15 “public” donations per month and 10 referrals from agencies on behalf of their clients. This has translated into:

- **159 agency referral requests for furniture**
- **202 donors (50+ tons collected)**
- **144 clients received furniture**

Project Funding Partners

A key component of Fresh Start is providing mental health clinical assistance to persons with a hoarding disorder in conjunction with developing a service plan to declutter and maintain the home. Therapists facilitate support groups and classes based on the “Buried in Treasures” curriculum. Our model was selected by the **State’s Executive Office of Elder Affairs** as one on three pilot regional-based *Elder Mental Health Outreach Team* programs four years ago and is now included in the Governor’s budget. This line item funds several mental health clinicians who provide in-home, remote and group counseling.

Other funding partners have included:

- Association for the Relief of Aged Women (ARAW)
- Commission for Citizens with Disabilities for New Bedford residents
- General fund for New Bedford residents
- Mass. Councils on Aging (MCOA)
- MA Housing Finance Agency
- Misc. agencies that help underwrite their clients' costs
- Southcoast Health Community Benefits Grant Program
- The Inter-Church Council of Greater New Bedford

Fresh Start Services

- Appraising possessions and selling them, with all profits going to the consumer
- Free Elder Mental Health Counseling
- Help with housing search
- Identifying community resources to assist with "non-traditional" needs
- Mediating landlord-tenant complaints
- Mediating tenant-neighbor complaints
- Organizing the home, packing and moving/disposition (a sliding scale is used for moving/disposal services when not covered by the referring agency or donation)
- Transportation to critical appointments

Separate and apart from 275 referrals to the Elder Mental Health Outreach Team, Fresh Start staff have coordinated services for **421 households** in addition to the **23 "open" cases** (organizing, disposition, pending moves).

Your consideration of this request is greatly appreciated.



Attachment

Cc: T. Mathieu
M. McDermott

L E A S E

THIS LEASE is dated as of _____ 2020 (the "Effective Date") between the Landlord and the Tenant named below and is of space in the Building described below.

ARTICLE 1: BASIC DATA: DEFINITIONS

1.1 Basic Data. Each reference in this Lease to any of the following terms shall be construed to incorporate the data for that term set forth in this Section:

Landlord: David Street, LLC, a Massachusetts limited liability company c/o Acorn Management Co., Inc. 25 Braintree Hill Office Park, Ste 104 Braintree, MA 02184

Tenant: City of New Bedford (Department of Community Services), 133 William Street, New Bedford, MA 02740

Primary Contact: John Lobo
Phone: 508.979.1962 or 508.989.0330
Email: john.lobo@newbedford-ma.gov

Property: The land with the buildings thereon known as and numbered 67-75 David Street New Bedford, Massachusetts.

Building: The building located at 67-75 David Street, New Bedford Massachusetts, as the same may be constituted and/or changed from time to time together with any additions and/or reductions thereto or thereof, as determined by Landlord in its sole and absolute discretion.

Premises: Approximately 6,000 rentable square feet of the 200,000 on the (3rd) floor of the Building shown on the location plan attached hereto as Exhibit A and incorporated herein.

Basic Rent: As used herein, the term "Basic Rent" shall be at the rate of \$2.51 per rentable square foot of space, Basic rent \$1.79 per square foot plus Common Area Expense charge of \$0.72 per square foot., The annual rent amount is Fifteen Thousand Sixty Dollars (\$15,060.00), to be paid in monthly installments of One Thousand Two Hundred Fifty-Five Dollars (\$1,255.00).

Option Period: Two (2) One (1) year options at mutual discretion with a 3% annual increase per year.

Notice to extend must be sent to the Landlord at least 3 months prior to the lease expiration.

Security Deposit: \$1,255.00 (Landlord acknowledges it is holding \$1,200.00 previously paid)

Last Month Rent: None

Term: One (1) year from Commencement Date, , beginning on the Commencement Date and expiring on the last day of the 12th month unless sooner terminated in accordance with this Lease. Each option will carry a rent increase of 3%.

Base Year Escalations: Common Area Maintenance (CAM) and Real Estate Taxes. Tenant shall pay its proportionate share of CAM and tax increases over the Base Year or three (3%) percent (6,000 SF/200,000 SF) of the increase. The increases, if any, shall be made in twelve (12) equal monthly payments payable with the Basic Rent.

Commercial General Liability Insurance: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate (combined single limit) for property damage, bodily injury, or death.

Additional Insured:

David Street, LLC and Acorn Management Co., Inc.
25 Braintree Hill Office Park
Suite #104
Braintree, MA 02184

Permitted Uses: Tenant agrees that the leased space will be used exclusively for the storage of furniture and nonperishable household items, and that the premises will be accessed only by staff, and the City of New Bedford employees.

Additional Rent: All charges and sums payable by Tenant as set forth in this Lease, other than and in addition to Basic Rent.

Agent: Acorn Management Co., Inc. or such other person or entity from time to time designated as "Agent" by Landlord.

Broker: None

Commencement Date: _____, 2020.

Rent Commencement Date: Commencement Date. Monthly rent is due on the fifth (5th) day of the calendar month.

ARTICLE 2: PREMISES AND APPURTENANT RIGHTS

2.1 Lease of Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term and upon the terms and conditions hereinafter set forth.

2.2 Appurtenant Rights and Reservations. Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use, in common with Landlord and others, public or common areas of the Building and Property, including hallways, stairways, and common walkways necessary for access to the Building and the Premises, access roads, driveways; but such rights shall always be subject to reasonable rules and regulations from time to time established by Landlord and to the right of Landlord to designate and change from time to time areas so to be used.

ARTICLE 3: BASIC RENT

3.1 Payment. Tenant agrees to pay the Basic Rent and Additional Rent to Landlord, or as directed by Landlord, commencing on the Rent Commencement Date, without offset, abatement, deduction, or demand. Basic Rent shall be payable in monthly installments as set forth above, in advance, on the first day of each and every calendar month during the Term of this Lease, to Landlord at Landlord's Address or at such other place as Landlord shall from time to time designate by notice, in lawful money of the United States. In the event that any installment of Basic Rent or any regularly scheduled payment of Additional Rent is not paid when due, Tenant shall pay a fee equal to 5% of the overdue payment plus interest on the overdue payment at eighteen (18%) percent per annum (but in no event higher than the maximum rate of interest permitted by law) until paid in full. Landlord and Tenant agree that all amounts due from Tenant under or in respect of this Lease, whether labeled Basic Rent, Additional Rent or otherwise, shall be considered as rental reserved under this Lease for all purposes, including without limitation regulations promulgated pursuant to the Bankruptcy Code, and including further without limitation Section 502(b) thereof.

ARTICLE 4: CONDITION

4.1 Condition of Premises. The Premises are being leased in their present condition, "as is, where is" without representation or warranty by Landlord of any kind, type, or nature (express or implied).

ARTICLE 5: USE OF PREMISES

5.1 Permitted Use.

(a) Tenant agrees that the Premises shall be used and occupied by Tenant only for Permitted Uses and for no other use without Landlord's express written consent.

(b) Tenant agrees to conform to the following provisions during the Term of this Lease:

(i) Tenant shall cause all freight to be delivered to or removed from the Building and the Premises in accordance with the Rules and Regulations established by Landlord therefor.

(ii) Tenant will not place on the exterior of the Premises (including both interior and exterior surfaces of doors and interior surfaces of windows) or on any part of the Building outside the Premises, any sign, symbol, advertisement or the like visible to public view outside of the Premises without the prior written consent of Landlord, and all necessary municipal authorities;

(iii) Tenant shall not perform any act or carry on any practice which may injure the Premises, or any other part of the Building, or cause any offensive odors or loud noise or constitute a nuisance or a menace to any other tenant or tenants or other persons in the Building;

(iv) Tenant shall, in its use and/or occupancy of the Premises and in connection with any alterations or improvements in or about the Premises made by or at the request of Tenant, comply with the requirements of all applicable governmental laws, rules and regulations, including, without limitation, the Americans With Disabilities Act of 1990, as amended (the "ADA") and the regulations of any Architectural Access Board; and

(v) Tenant shall not abandon the Premises.

(vi) Tenant will warrantee that all stored items are free of mold, pests, and infestation, and will assume liability for any potential resulting remediation of the premises.

(vii) Tenant agrees that the leased space will be used exclusively for the storage of furniture and nonperishable household items, and that the premises will be accessed only by tenant staff, and City of New Bedford employees.

5.2 Installations and Alterations by Tenant. Tenant shall make no alterations, additions, or improvements (collectively, "Alterations") in or to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the above, Tenant may make non-structural alterations in an amount up to \$5,000.00 without Landlord consent. Tenant will be responsible for sub metering the electric metering and fencing off the space for their requirement according to building and fire code specifications subject to Landlord approval. Tenant shall have the right to place its business sign on the exterior of the premises at its own cost subject to Landlord approval, which approval shall not be unreasonably withheld or delayed.

5.3 No Hazardous Materials or Use. Tenant shall not use, store, handle, treat, transport, release or dispose of any hazardous materials on or about the Premises or the Property without Landlord's prior written consent, in Landlord's sole discretion. Tenant covenants and agrees that Tenant will not do or permit anything to be done in or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of property or liability insurance on the Premises or the Building above the standard rate applicable to Premises being occupied for the Permitted Uses. Tenant shall indemnify, defend and hold Landlord harmless from and against, any liabilities, losses claims, damages, interest, penalties, fines, attorneys' fees, experts' fees, court costs, remediation costs, and other expenses which result from any violation of any environmental laws by Tenant and/or by Tenant's agents, servants, employees invitees and contractors and/or the use, storage, handling, treatment, transportation, release, threat of release or disposal of hazardous materials in or about the Premises or the Property by Tenant or Tenant's agents, employees, contractors or invitees, to the extent permitted by law.

ARTICLE 6: ASSIGNMENT AND SUBLETTING

6.1 Prohibition. Tenant covenants and agrees that this Lease or any interest herein, will not be assigned, mortgaged, pledged, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, and that neither the Premises nor any part thereof will be encumbered in any manner by reason of any act or omission on the part of

Tenant, or used or occupied or permitted to be used or occupied, by anyone other than Tenant, or for any use or purpose other than a Permitted Use, or be sublet (which term, without limitation, shall include granting of concessions, licenses and the like) in whole or in part, without, in each case, the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

ARTICLE 7: REPAIRS AND SERVICES

7.1 Landlord Repairs. Landlord agrees to keep and/or maintain the Building in good order, condition and repair the roof, public areas, exterior walls of the Building (including exterior glass) and structure of the Building (including all plumbing, mechanical and electrical systems installed by Landlord, but specifically excluding any supplemental heating, ventilation or air conditioning equipment or systems or components thereof which serve only the Premises, all insofar as they affect the Premises, except that Landlord shall in no event be responsible to Tenant for the repair of glass in the Premises, the doors (or related glass and finish work) leading to the Premises, or any condition in the Premises or the Building caused by any act or neglect of Tenant or that of Tenant's agents, employees, invitees or contractors. Landlord shall not be responsible to make any improvements or repairs to the Building other than as expressly in this Section. Landlord shall never be liable for any failure to make repairs which Landlord has undertaken to make under the provisions of this Section or elsewhere in this Lease, unless Tenant has given notice to Landlord of the need to make such repairs, and Landlord has failed to commence to make such repairs within a reasonable time after receipt of such notice, or fails to proceed with reasonable diligence to complete such repairs; provided, however, in no event shall Landlord's failure to make such repairs be construed as an eviction of Tenant, work an abatement of Basic Rent or Additional Rent, entitle Tenant to any reduction in Basic Rent or Additional Rent, or relieve Tenant from the operation of any covenant or condition herein contained.

7.2 Tenant Repairs. Tenant will keep the Premises and every part thereof neat and clean, and will maintain the same in good order, condition and repair, excepting only those repairs for which Landlord is responsible under the terms of this Lease, reasonable wear and tear of the Premises, and damage by fire or other casualty or as a consequence of the exercise of the power of eminent domain; and Tenant shall surrender the Premises, at the end of the Term, in such condition. Tenant shall be responsible for the daily cleaning of the Premises, and such services shall not be provided by Landlord. Without limitation, Tenant shall comply with all laws, codes and ordinances from time to time in effect and all directions, rules and regulations of governmental agencies having jurisdiction, and the standards recommended by the local Board of Fire Underwriters applicable to Tenant's use and occupancy of the Premises, and shall, at Tenant's expense, obtain all permits, licenses and the like required thereby. If repairs are required to be made by Tenant pursuant to the terms hereof, and Tenant fails to make the repairs, upon not less than ten (10) days' prior written notice (except that no notice shall be required in the event of an emergency), Landlord may make or cause such repairs to be made (but shall not be required to do so), and charge the Tenant for such repairs as Additional Rent.

7.3 Floor Load - Heavy Machinery. Tenant shall not place a load upon any floor in the Premises exceeding the floor load per square foot of area which such floor was designed to carry, and which is allowed by law. Forklifts are not allowed in the building.

7.4 Utility Services. Tenant shall be responsible for the payment for all separately metered utilities used and consumed in the Premises.

7.5 Interruption of Service. Landlord reserves the right to curtail, suspend, interrupt and/or stop the supply of water, sewage, electrical current, cleaning, and other services, and to curtail, suspend, interrupt and/or stop use of entrances and/or lobbies serving access to the Building, without thereby incurring any liability or abatement of rent to Tenant, when necessary by reason of accident or emergency, or for repairs, alterations, replacements or improvements in the judgment of Landlord reasonably exercised, desirable or necessary.

ARTICLE 8: INDEMNITY AND INSURANCE

8.1 Tenant's Indemnity. Except to the extent arising from the gross negligence or willful misconduct of Landlord or its agents or employees, Tenant agrees to indemnify and save harmless Landlord and Landlord's partners, members, shareholders, officers, directors, managers, employees, agents and contractors from and against all claims, losses, cost, damages, liability or expenses of whatever nature arising: (i) from any accident, injury or damage whatsoever to any person, or to the property of any person, occurring in or about the Premises; (ii) from any accident, injury or damage whatsoever to any person, or to property of any person, occurring on or about the Property, where such accident, damage or injury results or is claimed to have resulted from any act or omission on the part of Tenant or Tenant's agents, employees, contractors, invitees; or (iii) the use or occupancy of the Premises or of any business conducted therein, to the extent permitted by law.

8.2 Tenant Insurance. Tenant agrees to maintain in full force from the Commencement Date, throughout the Term of this Lease, all insurance required to be maintained by Tenant under all applicable provisions of this Lease as well as a policy of commercial general liability and property damage insurance (including broad form contractual liability, independent contractor's hazard and completed operations coverage) under which Tenant is named as an insured and Landlord as additional insured, and under which the insurer agrees to indemnify and hold Landlord harmless from and against all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages set forth in Section. Each policy required hereunder shall be non-cancelable and non-amendable without thirty (30) days' prior notice to Landlord, shall be written on an "occurrence" basis, and shall be in at least the amounts of the Initial General Liability Insurance specified in Section 1.1 or such greater amounts as Landlord in its reasonable discretion shall from time to time request, and certificates thereof satisfactory to Landlord shall be delivered to Landlord.

8.3 Tenant's Risk. Tenant agrees to use and occupy the Premises and to use such other portions of the Property as Tenant is herein given the right to use at Tenant's own risk. Any goods, property or personal effects stored or placed in or about the Premises shall be at the sole risk of Tenant, and neither Landlord nor Landlord's insurers shall in any manner be held responsible therefor.

8.4 Waiver of Subrogation. The parties hereto shall each procure an appropriate clause in, or endorsement on, any property insurance policy on the Premises or any personal property, fixtures or equipment located thereon or therein, pursuant to which the insurer waives subrogation or consents to a waiver of right of recovery in favor of either party, its respective agents or employees.

ARTICLE 9: FIRE, EMINENT DOMAIN, DEMOLISH, RENOVATION

9.1 Landlord's Right of Termination. If (a) the Premises or the Building are substantially damaged by fire or casualty (the term "substantially damaged" meaning damage of such a character that the same cannot, in the ordinary course, reasonably be expected to be repaired within one hundred twenty (120) days from the time that repair work would commence), or (b) substantially all of the Building is taken by any exercise of the right of eminent domain, then Landlord shall have the right to terminate this Lease (even if Landlord's entire interest in the Premises may have been divested) by giving notice of Landlord's election so to do within ninety (90) days after the occurrence of such casualty or the effective date of such taking, whereupon this Lease shall terminate thirty (30) days after the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

9.2 Demolish; Termination. Notwithstanding anything contained in this Lease to the contrary, if Landlord intends to demolish, renovate, remodel or alter the Building to such an extent that Landlord requires possession of the Premises, then Landlord, upon giving Tenant ninety (90) days written notice, shall have the right to terminate this Lease and this Lease shall expire on the expiration of ninety (90) days from the date of giving of such notice without compensation of any kind to Tenant.

ARTICLE 10: HOLDING OVER; SURRENDER

10.1 Holding Over. Any holding over by Tenant after the expiration of the Term of this Lease shall be treated as a daily tenancy at sufferance in an amount equal to one and one-half (1 ½) times the Basic Rent and the Additional Rent herein provided (prorated on a daily basis) in effect on the day immediately preceding expiration or earlier termination. Tenant shall also pay to Landlord all damages, direct and/or indirect (including, without limitation, loss of rental income), sustained by reason of any such holding over. In all other respects, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable. Landlord may, but shall not be required to, and only on written notice to Tenant after the expiration of the Term hereof, elect to treat such holding over as a renewal of one (1) year, to be on the terms and conditions set forth in this Section.

10.2 Surrender of Premises. Upon the expiration or earlier termination of the Term of this Lease, Tenant shall peaceably quit and surrender to Landlord the Premises in neat and clean condition and in good order, condition and repair substantially similar to the condition at the Commencement Date, excepting only ordinary wear and use.

ARTICLE 11: RIGHTS OF MORTGAGEES; TRANSFER OF TITLE

11.1 Rights of Mortgagees. This Lease shall be subject and subordinate to the lien and terms of any mortgage, deed of trust or ground lease or similar encumbrance (collectively, a "**Mortgage**", and the holder thereof from time to time the "**Holder**") from time to time encumbering the Premises, whether executed and delivered prior to or subsequent to the date of this Lease, unless the Holder shall elect otherwise. If this Lease is subordinate to any Mortgage and the Holder or any other party shall succeed to the interest of Landlord pursuant to the Mortgage (such Holder or other party, a "**Successor**"), at the election of the Holder or Successor, Tenant shall attorn to the or Successor and this Lease shall continue in full force and effect between the Holder or Successor and Tenant. Tenant agrees to execute such instruments of subordination or attornment in confirmation of the foregoing agreement as the Holder or Successor reasonably may request, and Tenant hereby appoints the Holder or Successor as Tenant's attorney-in-fact to execute such subordination or attornment agreement upon default of Tenant in complying with the Holder's or Successor's request.

11.2 Assignment of Rents and Transfer of Title. With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage on property which includes the Premises, Tenant agrees that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder unless such holder shall, by notice sent to Tenant, specifically otherwise elect and, except as aforesaid, such holder shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Premises. In the event of any transfer of title to the Property by Landlord, Landlord shall thereafter be entirely freed and relieved from the performance and observance of all covenants and obligations hereunder.

11.3 Notice to Mortgagee. After receiving notice from Landlord of any Holder of a Mortgage which includes the Premises, no notice from Tenant to Landlord alleging any default by Landlord shall be effective unless and until a copy of the same is given to such Holder (provided Tenant shall have been furnished with the name and address of such Holder), and the curing of any of Landlord's defaults by such Holder shall be treated as performance by Landlord.

ARTICLE 12: DEFAULT; REMEDIES

12.1 Tenant's Default.

(a) If at any time subsequent to the date of this Lease any one or more of the following events (herein referred to as a "Default of Tenant") shall happen:

(i) Tenant shall fail to pay the Basic Rent or Additional Rent hereunder when due and such failure shall continue for ten (10) Business Days after notice to Tenant from Landlord; or

(ii) Tenant shall neglect or fail to perform or observe any other covenant herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant specifying such neglect or

failure, or if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly (and in any event within such thirty (30) day period) to remedy the same and to prosecute such remedy to completion with diligence and continuity (and in any event, within ninety (90) days after the notice described in this **subparagraph (ii)**); or

(iii) Tenant's leasehold interest in the Premises shall be taken on execution or by other process of law directed against Tenant; or

(iv) Tenant shall make an assignment for the benefit of creditors or shall be adjudicated insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future Federal, State or other statute, law or regulation for the relief of debtors (other than the Bankruptcy Code, as hereinafter defined), or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall admit in writing its inability to pay its debts generally as they become due; or

(v) A petition shall be filed against Tenant in bankruptcy or under any other law seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future Federal, State or other statute, law or regulation and shall remain undismissed or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or if any debtor in possession (whether or not Tenant) trustee, receiver or liquidator of Tenant or of all or any substantial part of its property or of the Premises shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(vi) If: (x) Tenant shall fail to pay the Basic Rent or Additional Rent hereunder when due or shall fail to perform or observe any other covenant herein contained on Tenant's part to be performed or observed and Tenant shall cure any such failure within the applicable grace period set forth in clauses (i) or (ii) above; or (y) a Default of Tenant of the kind set forth in clauses (i) or (ii) above shall occur and Landlord shall, in its sole discretion, permit Tenant to cure such Default of Tenant after the applicable grace period has expired; and the same or a similar failure shall occur more than once within the next 365 days (whether or not such similar failure is cured within the applicable grace period); then in any such case Landlord may terminate this Lease as hereinafter provided.

12.2 Landlord's Remedies.

(a) Upon the occurrence of a Default of Tenant, Landlord may terminate this Lease in any manner permitted by applicable law and/or by written notice to Tenant, specifying a date not less than ten (10) days after the giving of such notice on which this Lease shall terminate and this Lease shall come to an end immediately or on the date determined by Landlord and as may be permitted by Law or as applicable on the date specified in such written notice as fully and completely as if such date were the date herein originally fixed for the expiration of the Term of this Lease, and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided. If this Lease shall have been terminated as provided in this

Article, then Landlord may re-enter the Premises, either by summary proceedings, ejectment or as otherwise permitted by applicable law, and remove and dispossess Tenant and all other persons and any and all property from the same, as if this Lease had not been made. Reasonable attorneys' fees and expenses incurred by or on behalf of Landlord in enforcing its rights hereunder or occasioned by any Default of Tenant shall be paid by Tenant.

(b) If this Lease shall have been terminated as provided in this Article, Tenant shall pay the Basic Rent and Additional Rent up to the time of such termination, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such termination, and whether or not the Premises shall have been re-let, shall be liable to Landlord for, and shall pay to Landlord, as liquidated current damages: (x) the Basic Rent and Additional Rent payable hereunder if such termination had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, advertising, expenses of employees, alteration costs and expenses of preparation for such reletting; and (y) if this Lease provides that Tenant was entitled to occupy the Premises for any period of time without paying Basic Rent, the amount of Basic Rent that Tenant would have paid for any such period. Tenant shall pay the portion of such current damages referred to in clause (x) above to Landlord monthly on the days which the Basic Rent would have been payable hereunder if this Lease had not been terminated, and Tenant shall pay the portion of such current damages referred to in clause (y) above to Landlord upon such termination.

(c) In case of any Default of Tenant, re-entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the Term of this Lease and may grant concessions or free rent to the extent that Landlord considers advisable and necessary to re-let the same and (ii) make such alterations, repairs and decorations in the Premises as Landlord considers advisable and necessary for the purpose of reletting the Premises; and the making of such alterations, repairs and decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease.

(d) Whether or not this Lease is terminated by Landlord as provided in this Article, Tenant further agrees that Landlord may file suit from time to time to recover any sums due under the terms of this Lease and that no recovery of any portion due Landlord hereunder shall be a defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord. Reletting the Premises shall not be construed as an election on the part of Landlord to terminate this Lease, and notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach, whereupon the foregoing provisions with respect to termination shall apply. Nothing herein shall be deemed to require Landlord to await the date whereon this Lease or the Term hereof would have expired by limitation had there been no such default by Tenant, or no such termination, as the case may be.

12.3 Remedies Cumulative. The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may at any time be entitled lawfully, and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

12.4 Waiver. Failure on the part of Landlord to complain of any action or non-action on the part of Tenant, no matter how long the same may continue, shall never be a waiver of any of the rights hereunder. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

12.5 Security Deposit. If a security deposit is specified in Section 1.1 hereof, Tenant agrees that the same will be paid upon execution and delivery of this Lease, and that Landlord shall hold the same throughout the Term of this Lease as security for the performance by Tenant of all obligations on the part of Tenant hereunder. Landlord shall have the right from time to time, without prejudice to any other remedy Landlord may have on account thereof, to apply such deposit, or any part thereof, to Landlord's damages arising from, or to cure, any Default of Tenant or, at Landlord's Option and without curing or being deemed to have cured any Default of Tenant, Landlord may apply and retain all or any portion of such Security Deposit in order to pay any payment or amount (including, without limitation, any costs, expenses or damages sustained or incurred by Landlord as a result of Tenant's failure to timely pay, perform or observe any payment or other obligation of Tenant under this Lease as and when due or to be performed) and whether or not such obligation shall accrue or arise before or after expiration or earlier termination of the Term of this Lease to which Landlord is entitled under this Lease whether or not such payment or amount was due or payable before or after expiration or earlier termination of this Lease. If Landlord shall so apply and/or retain all or any or all of such deposit, Tenant shall immediately upon demand deposit with Landlord the amount so applied to be held as security hereunder. While Landlord holds such deposit, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. If Landlord conveys Landlord's interest under this Lease, the deposit, or any part thereof not previously applied, may be turned over by Landlord to Landlord's grantee, and, if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section, and the return thereof in accordance herewith.

12.6 Landlord's Default. Landlord shall in no event be in default under this Lease unless Landlord shall neglect or fail to perform any of its obligations hereunder and shall fail to remedy the same within thirty (30) days after notice to Landlord specifying such neglect or failure, or if such failure is of such a nature that Landlord cannot reasonably remedy the same within such thirty (30) day period, Landlord shall fail to commence promptly (and in any event within such thirty (30) day period) to remedy the same and to prosecute such remedy to completion with diligence and continuity.

12.7 Independent Covenant. Tenant acknowledges and agrees that its covenant to pay Basic Rent and Additional Rent hereunder is independent of Landlord's obligation to act or refrain from acting hereunder, and that in the event that Tenant shall have a claim against Landlord, Tenant shall not have the right to deduct the amount allegedly owed to Tenant from any Basic Rent or

Additional Rent due hereunder, it being understood that Tenant's sole remedy for recovering upon such claim shall be to bring an independent legal action against Landlord.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 Rights of Access. Landlord and Agent shall have the right to enter the Premises at all reasonable hours for the purpose of inspecting the Premises, doing maintenance or making repairs or otherwise exercising its rights or fulfilling its obligations under this Lease, and Landlord and Agent also shall have the right to make access available at all reasonable hours to prospective or existing mortgagees or purchasers of any part of the Property, upon prior reasonable written notice.

13.2 Covenant of Quiet Enjoyment. Subject to the terms and conditions of this Lease, on payment of the Basic Rent and Additional Rent and observing, keeping and performing all of the other terms and conditions of this Lease on Tenant's part to be observed, kept and performed, Tenant shall lawfully, peaceably and quietly enjoy the Premises during the term hereof, without hindrance or ejection by any persons lawfully claiming under Landlord to have title to the Premises superior to Tenant. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

13.3 Landlord's Liability. Tenant agrees to look solely to Landlord's equity interest in the Property at the time of recovery for recovery of any judgment against Landlord, and agrees that neither Landlord nor any successor of Landlord shall be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. In no event shall Landlord ever be liable to Tenant for any loss of business or any other indirect or consequential damages suffered by Tenant from whatever cause. Any repairs or restoration required or permitted to be made by Landlord under this Lease may be made during normal business hours, and Landlord shall have no liability for damages to Tenant for inconvenience, annoyance or interruption of business arising therefrom.

13.4 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than ten (10) business days prior written notice by Landlord, execute, acknowledge and deliver to Landlord an estoppel certificate containing such statements of fact as Landlord reasonably requests.

13.5 Brokerage. Both parties warrant and represent that it has dealt with no broker in connection with the consummation of this Lease. In the event of any brokerage claims against Landlord or Tenant predicated upon prior dealings with Landlord or Tenant, Landlord and Tenant agreed to defend same and indemnify Landlord or Tenant against any such claim.

13.6 Rules and Regulations. Tenant shall abide by the Rules and Regulations from time to time established by Landlord, and provided to the Tenant, in writing. Landlord shall not be liable to Tenant for violation of the same by any other tenant or occupant of the Building, or persons having business with them.

13.7 Provisions Binding. Etc. 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. Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant (except in the case of Tenant, only such successors and assigns as may be permitted hereunder) and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and permitted assigns.

13.8 Recording. Tenant agrees not to record this Lease, but each party hereto agrees, on the request of the other, to execute a notice of lease in recordable form and complying with applicable law. At Landlord's request, promptly upon expiration of or earlier termination of the Term, Tenant shall execute and deliver to Landlord a release of any document recorded in the real property records. The obligations of Tenant under this Section shall survive the expiration or any earlier termination of the Term.

13.9 Notice. All notices or other communications required hereunder shall be in writing and shall be deemed duly given if sent by reputable overnight delivery or courier service (e.g., Federal Express) providing for receipted delivery, or if sent by certified or registered mail, return receipt requested, postage prepaid, to the following address:

(a) if to Landlord, at Landlord's Address set forth in Section 1.1

(b) if to Tenant, at Tenant's Address set forth in Section 1.1.

Receipt of notice or other communication shall be conclusively established by either (i) return of a return receipt indicating that the notice has been delivered; or (ii) evidence of receipt upon delivery by the courier service or (iii) return of the letter containing the notice with an indication from the courier or postal service that the addressee has refused to accept delivery of the notice. Either party may change its address for the giving of notices by notice given in accordance with this Section.

13.10 Entire Agreement: Modification. This Lease is the entire agreement between Landlord and Tenant, and this Lease expressly supersedes any negotiations, considerations, representations and understandings and proposals or other written documents relating hereto. This Lease may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof.

13.11 Waiver of Jury Trial. Landlord and Tenant hereby each waive trial by jury in any action, proceeding or counterclaim brought by either against the other, on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises.

13.12 Time Is of the Essence. Time is of the essence of each provision of this Lease.

13.13 Governing Law. This Lease shall be governed by the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed, under seal, by persons hereunto duly authorized, as of the date first set forth above.

LANDLORD:
David Street, LLC

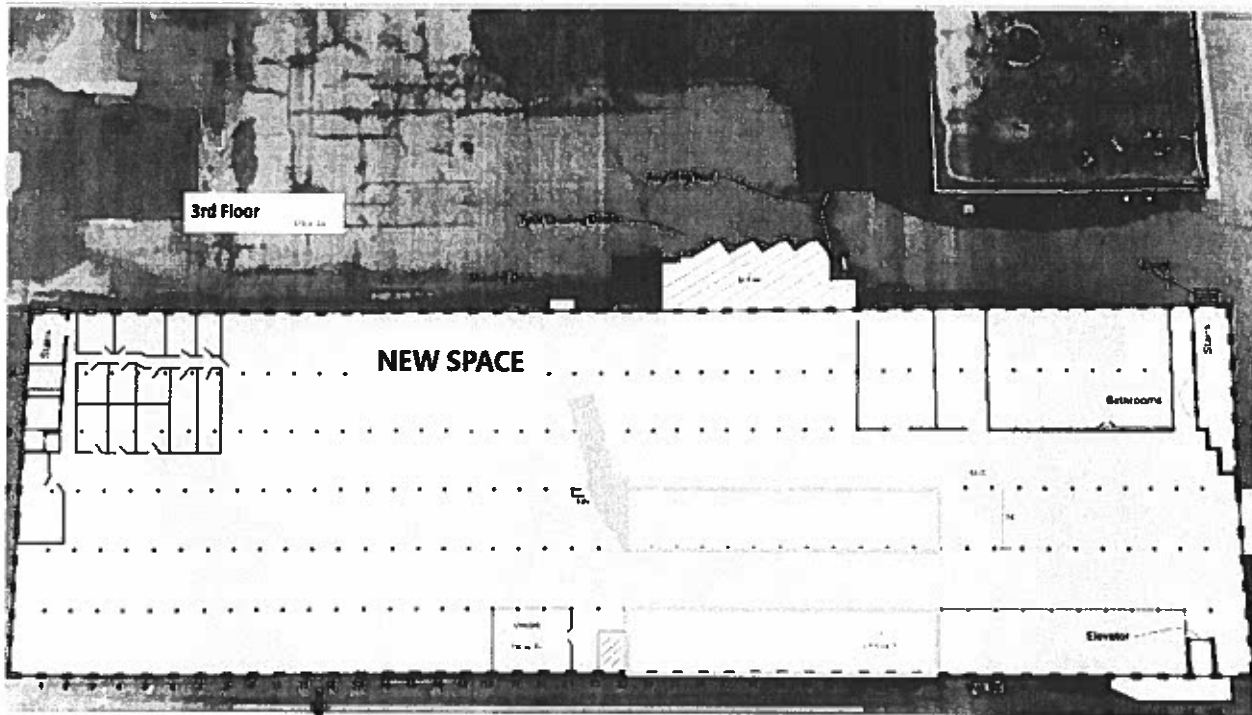
By: _____
Dana D. Riccardi, Manager and
Authorized Signatory

TENANT:
City of New Bedford

By: _____

By: _____

EXHIBIT "A"
LOCATION PLAN OF PREMISES
Not to Scale



See Next Page

**EXHIBIT "A" Continued
Modifications**

1. At Tenant's option, Tenant will be responsible for the cost of interior improvements including the cost to fence off its Premises in accordance with building and fire code specification. Any interior improvements including fence and partitions will be subject to Landlord's prior approval, which approval shall not be unreasonably withheld or delayed.

2. Tenant will be responsible for the cost of interior improvements including the cost to fence off its Premises in accordance with building and fire code specification. Fence and partitions will be subject to Landlord's prior approval which approval shall not be unreasonably withheld or delayed.

Initial _____

Initial _____



CITY OF NEW BEDFORD

CITY COUNCIL

August 20, 2020

Ordered, that the Mayor is authorized on behalf of the City of New Bedford to execute a Lease between the City of New Bedford and David Street, LLC., a copy of which is attached hereto. The purpose of the proposed Lease is to house furniture donations for the department of Community Services Fresh Start Program.