

RESOLUTION NO. 30426

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FIFTH AMENDMENT TO LEASE AGREEMENT WITH EAST NOOGA, LLC, IN SUBSTANTIALLY THE FORM ATTACHED, FOR SENIOR ACTIVITY MEETING SPACE IN A PORTION OF EASTGATE TOWN CENTER AT 5600 BRAINERD ROAD, FOR AN ADDITIONAL TERM OF ONE (1) YEAR, FOR THE AMOUNT OF SEVEN THOUSAND FORTY-EIGHT AND 29/100 DOLLARS (\$7,048.29) PER MONTH, FOR A TOTAL AMOUNT OF EIGHTY-FOUR THOUSAND FIVE HUNDRED SEVENTY-NINE AND 48/100 DOLLARS (\$84,579.48).

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby authorizing the Mayor to enter into a Fifth Amendment to Lease Agreement with East Nooga, LLC, in substantially the form attached, for a senior activity meeting space in the portion of Eastgate Town Center at 5600 Brainerd Road, for an additional term of one (1) year, for the amount of \$7,048.29 per month, for a total amount of \$84,579.48.

ADOPTED: July 28, 2020

/mem

**FIFTH AMENDMENT TO LEASE AGREEMENT**

This FIFTH AMENDMENT TO LEASE AGREEMENT (“Fifth Amendment”) is made as of the date of full execution below (“Effective Date”), by and between East Nooga, LLC, a Delaware limited liability company (“Landlord”), and the City of Chattanooga, a Tennessee municipal corporation (“Tenant”), (collectively, the “Parties”), for Suite C-12 containing an agreed-upon 11,405 rentable square feet (“Premises”), located in the Eastgate Town Center, 5600 Brainerd Road, Chattanooga, TN 37411 (“Center”).

**RECITALS**

WHEREAS, Landlord and Tenant entered into a Lease Agreement – Eastgate Town Center dated April 2, 2012 (the “Lease”) as amended by First Amendment to Lease dated August 5, 2014, the Second Amendment to Lease dated July 8, 2015, the Third Amendment to Lease dated July 31, 2018, and the Fourth Amendment to Lease dated July 1, 2019

WHEREAS, the Lease Agreement – Eastgate Town Center expired on July 31, 2014, The First Amendment to Lease expired on July 31, 2015, the Second Amendment to Lease expired on July 31, 2018, the Third Amendment to Lease expired on July 31, 2019, and the Lease Term Extension Period set forth in the Fourth Amendment expires on July 31, 2020.

WHEREAS, Tenant now desires to extend the Lease on the following terms and conditions.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Term. The Term of the Lease shall be extended for twelve months beginning August 1, 2020 and ending on July 31, 2021 (“Fifth Extension Period”).

2. Operating Expenses. During the Fifth Extension Period, the Tenant shall be responsible for paying the following monthly operating expenses on the first day of each month:

<u>Fifth Extension Period</u>	<u>Monthly</u>	<u>PSF</u>
8/1/20 through 7/31/21	\$7,048.29	.62

3. Miscellaneous.

(a) Definitions. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Lease.

(b) Agreement. The Lease and this Fifth Amendment set forth all the covenants, promises, agreements, conditions and understandings between the parties hereto concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. All prior communications, negotiations, arrangements, representations, agreements and understandings, whether oral, written or both, between the parties hereto, and their representatives, are merged herein and extinguished, the Lease and this Fifth Amendment superseding and canceling the same.

(c) Priority. In the event of any conflict between the terms of the Lease and this Fifth Amendment, the terms of this Fifth Amendment shall prevail. Except as specifically provided herein, all of the terms, provisions, covenants and conditions of the Lease are hereby ratified and confirmed and shall continue in full force and effect.

(d) Headings. The captions and headings throughout this Fifth Amendment are for convenience and reference only, and in the same shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision, or the scope or intent hereof, nor in any way affect this Fifth Amendment.

(e) Authority. The individuals executing this Fifth Amendment hereby represent and warrant that they are empowered and duly authorized to so execute this Fifth Amendment on behalf of the parties they represent.

(f) Benefit. This Fifth Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(g) Counterparts. This Fifth Amendment may be executed on one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single document. The parties hereby agree that facsimile and electronic (PDF) signatures are acceptable to effectuate the terms of this Fifth Amendment.

(h) Time. Time is of the essence of each and every provision of this Fifth Amendment and the Lease and the performance thereof.

(i) Recitals. The Recitals are incorporated into this Fifth Amendment by this reference as if restated in full.

(j) Law. This Fifth Amendment and the Lease shall be interpreted and enforced under the laws of the State of Tennessee.

(k) Acknowledgement. By the execution hereof, Tenant acknowledges the full and faithful performance by Landlord of the obligations to be performed by it under the Lease to the date hereof.

(l) All other terms, conditions, and obligations of the Lease, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Fifth Amendment as of the date of full execution below.

TENANT

LANDLORD

**CITY OF CHATTANOOGA**

**EAST NOOGA, LLC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Andy Berke

Print Name: Michael Murabito

Title: Mayor

Title: General Manager/Authorized Agent

Date: \_\_\_\_\_

Date: \_\_\_\_\_