

Resolution No. R-18-2024
Adopted: October 10, 2024

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF KENSINGTON TO APPROVE THE FIRST AMENDMENT TO THE PURCHASE AGREEMENT WITH 9323B AND 9327 FRASER AVENUE, LLC, TO ACQUIRE 10528 ST. PAUL STREET, KENSINGTON, MD, TO MAKE PROVISION FOR THE CONTINUATION OF A LEASE THROUGH JANUARY 31, 2025, WITH THE CURRENT TENANT MXD SERVICES, LLC; TO ACCEPT THE ASSIGNMENT OF THE LEASE BETWEEN 9323B AND 9327 FRASER AVENUE, LLC, LANDLORD, AND MXD SERVICES, LLC, TENANT, FOR THE PERIOD NOVEMBER 1, 2024, THROUGH JANUARY 31, 2025; AND TO APPROVE THE FORM OF A SECOND AMENDMENT TO LEASE BETWEEN 9323B AND 9327 FRASER AVENUE, LLC, LANDLORD, AND MXD SERVICES, LLC, TENANT, EXTENDING THE LEASE THROUGH JANUARY 31, 2025

Whereas, Article VI, "Powers of the Council", Section 601, "General Powers", of the Town Charter authorizes the Mayor and Council to take action as it may deem necessary for the good government of the Town; for the protection and preservation of property, rights, and privileges; for the preservation of peace and good order; for securing person and property from violation, danger, or destruction; and for the protection and promotion of the health, safety, and welfare of the residents and visitors of the Town; and

Whereas, pursuant to §5-203 of the Local Government Article, Annotated Code of Maryland, the Town pursuant to State law is authorized to acquire real property by purchase; and

WHEREAS, the Mayor and Council authorized a Purchase Agreement with 9323B and 9327 FRASER AVENUE, LLC ("Owner") for the purchase of the real property located at 10528 St. Paul Street, Kensington, MD 20895 ("the Property"); and

Whereas, the Mayor and Council adopted Ordinance O-01-24 to authorize the purchase of the Property from the Owner, with settlement to proceed on November 1, 2024;

Whereas, there is a current tenant at the Property, MXD SERVICES, LLC, DBA SERVPRO ("ServPro"), under a Lease Agreement ("Lease") with a term that ends on October 31, 2024; and

WHEREAS, ServPro has signed a lease with 3925 Plyers LLC, with a lease term to begin on February 1, 2025, to rent the premises located at 3925 Plyers Mill Road; and

Whereas, ServPro has requested that the Town authorize the extension of the lease term at the Property, now set to end on October 31, 2024, to and until January 31, 2025, to allow for

its transition without interruption from the Property to its new location at 3925 Plyers Mill Road, on the same terms and conditions as those included in its current lease with the Owner; and

Whereas, the Mayor and Council have determined that it is in the public interest to assist the transition without interruption of ServPro from its current location at the Property to 3925 Plyers Mill Road under the terms and conditions of the current lease by accepting an assignment of the Lease and extending the Lease term through January 31, 2025; and

WHEREAS, to authorize an extension of the Lease as described, it is necessary that the Owner and the Town of Kensington agree to and sign a First Amendment to Purchase Agreement, and an Assignment and Assumption of the Lease, and that the Owner and ServPro agree to and sign a Second Amendment to the Lease; and

Whereas, the Mayor and Town Council have determined that, in order to effectuate the extension of the Lease term to January 31, 2025, it is in the public interest to authorize the Town Manager to sign a First Amendment to the Purchase Agreement and the Assignment and Assumption of Lease, and to approve the form of the Second Amendment to the Lease, in substantially the form as attached to this Resolution

Now, Therefore, Be It Resolved by the Mayor and Council of the Town of Kensington that the First Amendment to the Purchase Agreement and the Assignment and Assumption of Lease are hereby approved in substantially the form attached, and that the form of the Second Amendment to the Lease, in substantially the form attached is approved.

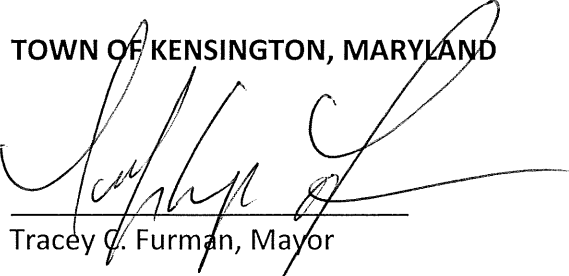
Adopted by the Town Council this 10th day of October, 2024.

Effective the 10th day of October, 2024.

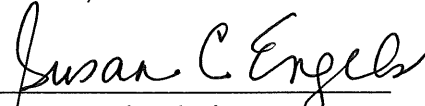
ATTEST:

By: 
Susan C. Engels, Clerk – Treasurer

TOWN OF KENSINGTON, MARYLAND


Tracey C. Furman, Mayor

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the Town Council in public meeting assembled on the 10th day of October, 2024.

By: 
Susan C. Engels, Clerk – Treasurer

FIRST AMENDMENT TO PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (this “Amendment”) is made this ____ day of October, 2024, by and between 9323B AND 9327 FRASER AVENUE, LLC (“Seller”) and TOWN OF KENSINGTON, a Municipal Corporation (“Purchaser”).

WHEREAS, the parties hereto entered into a Purchase Agreement, dated May 23, 2024 (the “Purchase Agreement”), for the purchase of real property and certain other assets located on land known as 10528 St. Paul Street, Kensington, MD 20895 (the “Property”), as further described in the Purchase Agreement; and

WHEREAS, the parties hereto desire to amend the Purchase Agreement in order to document their agreement concerning an extension of term of the existing lease for the Property, and assignment of such lease at closing, subject to execution of a second amendment to the existing lease, as more fully described below.

NOW THEREFORE, in view of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** All of the above-referenced Recitals are incorporated into and made a substantive part hereof.
2. **Defined Terms.** All capitalized terms used herein and not defined shall have the meanings ascribed to them in the Purchase Agreement.
3. Paragraph 7.1 of the Purchase Agreement is hereby amended in its entirety, subject to a contemporaneous execution of a certain Second Amendment to Lease, to read as follows:

7.1 Possession/Assignment of the Lease. Notwithstanding anything in the Agreement to the contrary, the parties hereto hereby acknowledge and agree that Seller will not give full, complete and actual possession of the Property to Purchaser on the Closing Date. Purchaser hereby acknowledges that, at the Closing, it shall take title to the Property subject to the rights of MDX Services, LLC (“Tenant”) under the terms of that certain Lease by and between Tenant and Seller, dated October 3, 2014 (as amended, the “Lease”), as amended by that certain Amendment to Lease, dated June 3, 2019, and as further amended by that certain Second Amendment to Lease, attached hereto and incorporated herein as **Exhibit A**, on the condition that said Second Amendment is executed by Seller and Tenant upon execution of this Amendment by Seller and Purchaser.

At the Closing, Purchaser and Seller shall enter into an assignment of the Lease to Purchaser, in the form attached hereto as **Exhibit B**. Any rental and other payments under the Leases shall be prorated between the parties as provided in this Purchase Agreement. Tenant’s security deposit, in the amount of \$4,320.00 (the “Security Deposit”), shall be

transferred to Purchaser at Closing; provided, however, that at the Seller's option in connection with Seller's tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code, Seller may transfer the Security Deposit to Purchase outside of Closing.

4. **Effect of this Amendment.** Except as otherwise expressly amended or modified herein, all other terms and conditions contained in the Purchase Agreement shall remain the same and in full force and effect.

5. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment under seal as of the day and year first above written.

SELLER:
9323B AND 9327 FRASER AVENUE, LLC

By: _____
Name: _____
Title: _____

PURCHASER:
TOWN OF KENSINGTON

By: _____
Name: _____
Title: _____

Exhibit A

Form of Second Amendment to Lease

Exhibit B

Form of Assignment of Lease

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (this “Amendment”) is made this ____ day of October, 2024, by and between 9323B AND 9327 FRASER AVENUE, LLC (“Landlord”), and MXD SERVICES, LLC (“Tenant”).

RECITALS:

WHEREAS, Landlord and Tenant entered into that certain Lease dated October 3, 2014, as amended by that certain Amendment to Lease dated June 3, 2019 (as amended, the “Lease”), whereby Tenant leases certain property known as 10528 St. Paul Street, Kensington, MD 20895 County, Maryland, as more particularly described in the Lease; and

WHEREAS, Landlord and Tenant mutually desire to amend the Lease as more particularly set forth below.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. **Recitals.** All of the above-referenced Recitals are incorporated into and made a substantive part hereof.
2. **Defined Terms.** All capitalized terms used in this Amendment which are not defined herein shall have the meaning given such terms in the Lease.
3. **Lease Term.** Notwithstanding anything in the Lease to the contrary, the lease term is hereby extended so that the Lease shall expire as of December 31, 2024 (the “**Extension**”). Rent during the Extension shall be \$6,642.64 per month.
4. **No Brokers.** Landlord and Tenant represent and warrant to each other that there are no brokerage commission or finders’ fees of any kind due in connection with this Amendment, and each of the parties hereto shall indemnify the other, and hold it harmless from any and all liabilities, damages, costs, claims and obligations arising from any such claims (including, without limitation, the cost of attorneys’ fees in connection therewith).
5. **Ratification of Lease.** All other terms, covenants and conditions of the Lease shall remain the same and continue in full force and effect, and shall be deemed unchanged, except as such terms, covenants and conditions of the Lease have been amended or modified by this Amendment and this Amendment shall, by this reference, constitute a part of the Lease. In the event of a conflict between the terms and conditions of the Lease and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall prevail.
6. **Authority.** Each party executing this Amendment hereby represents and warrants that the individual(s) executing this Amendment on behalf of such party has/have full power and authority to bind such party to the terms hereof.
7. **Counterparts and Electronic Signatures.** This Amendment may be executed and

delivered in multiple counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. The counterparts of this Amendment may be executed and delivered by facsimile, scanned and delivered electronically (including as a “pdf” or similar format) or signed electronically using an e-signature solution (including Adobe Sign) by either of the parties and such facsimile, scanned and electronically delivered or other electronic signatures shall be deemed original signatures for purposes of this Amendment, and all matters related thereto, and shall have the same legal effect as original signatures.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed as of the day and year first above written.

LANDLORD:

9323B AND 9327 FRASER AVENUE, LLC

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

MXD SERVICES, LLC

By: _____

Name: _____

Title: _____

Date: _____

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (the “**Assignment**”) dated as of November 1, 2024, is between **9323B AND 9327 FRASER AVENUE, LLC**, a Maryland limited liability company (“**Assignor**”), and **TOWN OF KENSINGTON**, a Municipal Corporation (the “**Assignee**”).

Recitals

A. Assignor is the lessor under the terms of that certain Lease by and between Assignor and MDX Services, LLC (“**Tenant**”), dated October 3, 2014, as amended by that certain Amendment to Lease, dated June 3, 2019, and as further amended by that certain Second Amendment to Lease dated October __, 2024 (as amended, the “**Lease**”), with respect to that certain real property and improvements thereon commonly known as 10528 St. Paul Street, Kensington, MD 20895, and more particularly described in **Exhibit A** attached hereto (the “**Property**”), which Lease is attached hereto as **Exhibit B**.

B. Assignor and Assignee entered into an Agreement of Sale dated as of June 5, 2024, as amended by a First Amendment to Purchase Agreement dated October ____, 2024, (the “**Purchase Agreement**”), pursuant to which Assignee agreed to purchase the Property from Assignor and Assignor agreed to sell the Property to Assignee, on the terms and conditions contained therein.

C. Assignor desires to assign its’ interest as lessor in the Lease to Assignee, and Assignee desires to accept the assignment thereof, on the terms and conditions below.

ACCORDINGLY, the parties hereby agree as follows:

1. **Assignment.** Assignor hereby assigns to Assignee, and Assignee hereby accepts from Assignor, all of its right, title, and interest in and to the Lease, and Assignee hereby accepts such assignment and assumes and agrees to perform and observe all of the Assignor’s obligations under the Lease arising from and after the date hereof including the obligations and duties of Assignor relating to any tenant deposits arising from and after the date hereof.

2. **Indemnification by Assignor.** Assignor agrees to defend, indemnify and hold Assignee harmless from and against any and all causes, claims, demands, losses, liabilities, costs, damages, expenses and fees, including, but not limited to, reasonable attorneys’ fees incurred directly or indirectly as a result of or in connection with any claim made by a third person seeking to impose liability or having imposed liability upon Assignee for an obligation incurred by Assignor in connection with any of the Leases prior to the date hereof.

3. **Indemnification by Assignee.** Subject to and without waiving common law and other governmental immunities and the provisions of §5-301 *et seq.* and §5-507, Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, Assignee agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including but not limited to reasonable attorneys’ fees and expenses) asserted against or incurred by Assignor by reason of or arising out of any failure by Assignee to

perform or comply with any of the obligations of lessor or landlord under the Leases accruing from and after the date hereof.

4. **Costs and Expenses.** In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the sole prevailing party's costs and expenses of such dispute, including, without limitation, reasonable attorneys' fees and costs, as awarded by a court of competent jurisdiction.

5. **Prorations.** Any rental and other payments under the Leases shall be prorated between the parties as provided in the Purchase Agreement.

6. **Binding Effect; Assignment.** This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. **Governing Law.** This Assignment shall be governed and construed in accordance with the laws of the State of Maryland.

8. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.

9. **Third Party Beneficiary.** This Assignment is entered into solely for the benefit of the Assignor and Assignee. No third party will be deemed a beneficiary of this Assignment, and no third party will have the right to make any claim or assert any right under this Assignment, except as set out herein.

[Signatures on following page]

Assignor and Assignee have executed this Agreement the day and year first above written.

SELLER:
9323B AND 9327 FRASER AVENUE, LLC

By: _____
Name: _____
Title: _____

PURCHASER:
TOWN OF KENSINGTON

By: _____
Name: _____
Title: _____

EXHIBIT A
Description of Real Property

That property containing approximately .2022 acres of land with improvements thereon, known as 10528 St. Paul Street, Kensington, Montgomery County, Maryland and as described as part of Lot 8 (eight) "Knowles Estates", Montgomery County, Maryland shown in Plat Book 1, Plat No. 24.

The improvements thereon being known as 10528 St. Paul Street, Kensington, MD 20895. Tax ID: 13-01025723.