

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") dated _____, between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia, (the "Landlord") and **NEWPORT NEWS SHIPBUILDING EMPLOYEES' CREDIT UNION, INC.**, a Virginia non-stock corporation, **D/B/A BAYPORT CREDIT UNION**, a not-for-profit financial cooperative, with a principal address of 3711 Huntington Avenue, Newport News, VA 23607 (the "Tenant").

RECITALS:

- A. Landlord is the record owner of property located at 22 Lincoln Street also known as City Hall (the "Property").
- B. Tenant and Landlord are parties to a Lease Agreement dated January 8, 2015 (the "2015 Agreement") in which Tenant leased from Landlord certain office space within the Property, on the 3rd Floor of the Property, containing approximately 1200 square feet (the "Premises") together with the right to use in common with others all common areas and facilities associated with the Property; excepting and reserving to Landlord the underlying land and the right to install, maintain, use, or repair and replace upon the Premises such pipes, pipe clean-outs, conduits, ducts, wires, meters, electric panels, utility rooms or closets, and any other materials or facilities located in or passing through the Premises which serve parts of the Property.
- C. Tenant and Landlord desire to maintain and continue the terms and conditions of the 2015 Agreement, as updated in this Agreement.

The parties to this Lease, intending to be legally bound, in consideration of the rents, covenants and agreements set forth in this Lease, hereby agree as follows:

- 1. **Incorporation of Recitals.** The Recitals stated above are incorporated into this Lease and made a part hereof.
- 2. **Leased Premises.** Landlord leases and demises to Tenant and Tenant takes and leases from Landlord, the Premises consisting of approximately 1200± square feet, as shown and labeled as "Credit Union" on Exhibit A: Leased Premises, which is attached hereto and incorporated herein by reference.
- 3. **Term.** The term of this Lease shall be for a period of five (5) years, commencing on September 1, 2021 and ending at midnight on August 31, 2026 (the "Term").
- 4. **Premises "AS IS".** Tenant represents that it has inspected and examined the Premises and accepts it in its present "AS IS" "WHERE IS" condition with no representations or warranties.
- 5. **Rent.** Tenant shall pay the as base rent for the Premises the sum of \$2,760.00 per

year (based on \$2.30 per rentable square foot). Tenant submitted a base rent payment of \$2,760.00 to the Landlord on February 1, 2021 for the time period of February 1, 2021 to January 31, 2022; therefore, the first payment under this Lease, which shall be made on February 1, 2022, shall be for the prorated amount of \$1,610.00 for the time period of February 1, 2022 to August 31, 2022. Subsequent payments for the full annual base rent amount of \$2,760.00 shall be made in advance, without demand therefor, on September 1 thereafter during the Term of this Lease.

6. **Permitted Use.** The Premises shall be used for the operation of a credit union and all related and/or necessary activities and for no other purpose without the express written consent of Landlord.

Tenant agrees to abide by, observe and comply with all federal, state and local laws, statutes, codes, ordinances, rules and regulations applicable to the use and occupancy of the Premises and with any covenants and restrictions to which the Premises are now or may hereafter be made subject.

The storage of "Hazardous Substances" in, on or upon the Premises is strictly prohibited. For purposes of this Lease, the term "Hazardous Substances" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, et seq.), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended, and the Toxic Substance Control Act (15 U.S.C. 2601, et seq.), as amended. Any costs associated with violations of law including, but not limited to, remediations, clean-up costs, fines, administrative or civil penalties or charges, and third party claims imposed on Landlord by any regulatory agency or by any third party as a result of the noncompliance with federal, state or local environmental laws and regulations or nuisance statutes by Tenant or by its employees, contractors, consultants, subcontractors, or any other persons, corporations, or legal entities retained by it for the Leased Premises, shall be paid by Tenant. The obligations of Tenant under this paragraph shall survive termination or expiration of this Lease.

7. **Utilities/Services/Taxes:** Landlord shall be responsible for maintaining the structure, roof and the major systems in the Property, including heating, air conditioning, electrical and plumbing systems serving the Premises. Landlord shall provide utilities to Tenant for the Premises and any electricity or other utilities to be used by Tenant or serving or associated with the Premises. Tenant shall be responsible and shall pay for any cable and/or telephone charges. Landlord shall be responsible for maintaining the security system serving the Property; however, Tenant shall be solely responsible for the installation, maintenance and costs of its own security system, including payment of any "false alarm" fee (s) assessed by a governmental authority. Tenant shall not have access to Landlord's server or computer systems.

Landlord shall not be responsible or liable to Tenant for any reduction in Rent or claims for damages to property of Tenant, or injury to persons, resulting from (i) the electrical, heating, plumbing, sewer, or other mechanical systems of the Premises, (ii) water, snow, or ice being upon or coming through the roof, walls, floors windows or doors of the Premises, (iii) the acts of

negligence of occupants of the Premises, or (iv) any fire or other casualty whatsoever. Landlord shall not be liable for failure to keep the Premises in repair.

Under no circumstances shall Landlord be required to perform any repairs to the interior of the Premises unless damage to the interior of the Premises is caused by structural, roof or system deficiency or failure not caused in any way by Tenant.

Tenant shall ensure that the interior of the Premises is kept in good repair, condition and working order, and in a manner so as not to promote rodent infestation.

Tenant shall maintain the interior of the Premises, at Tenant's expense. Tenant shall repair, replace or restore all damage to the Premises caused by the willful or negligent acts or omissions of Tenant or its agents, contractors, employees or invitees, or by a breach of Tenant's obligations under this Lease.

In addition to Rent, the Lessee shall timely pay all ad valorem personal property taxes with respect to the Premises.

8. **Termination.** This Lease may be terminated by either party in the event of default of any of the terms of this Lease, provided written notice of such default has been given by certified mail to the defaulting party. The defaulting party shall have 30 days from the date such notice is mailed in which to cure the default. Notwithstanding the foregoing, the notice provision shall not be applicable in the event Landlord must terminate the Lease due to an emergency or a violation of environmental, health or criminal law by Tenant requiring the suspension of activities at the Premises. Additionally, this Lease may be terminated by either party, for any reason, upon 90 days' written notice to the other party.

Upon termination of the Lease as stated herein, Tenant shall withdraw its equipment and cease performance of any activities under this Lease.

9. **Alterations/Damage or Destruction of Premises.** Tenant shall make no modifications, alterations, physical renovations, additions or improvements to the Premises without Landlord's prior written consent. Any approved modifications, alterations or improvements shall be performed only by a licensed contractor and upon plans satisfactory to Landlord in its sole discretion, at Tenant's expense. Upon the termination of this Lease, any modifications, alterations or improvements shall become the property of Landlord, or if Landlord requests, the same shall be removed, without damage to the Premises, and Tenant shall restore the Premises to as near its original condition as possible, excepting normal wear and tear.

In the event the Premises are damaged by fire or other casualty so as to render same untenable in whole or in substantial part, then Landlord may elect to terminate this Lease effective as of the date of such casualty. These elections by Landlord shall be made within 90 days after the occurrence of fire or other casualty, or shall be deemed waived. In the event of such termination, Tenant shall immediately surrender the Premises to Landlord who may enter upon and repossess the same and Tenant shall be relieved from further liability, except as otherwise stated in this Lease. Any rent paid in advance by Tenant shall be returned by Landlord in an amount prorated according to the actual period of occupancy.

10. **Assignment and Sublease.** Tenant shall not assign this Lease in whole or in part or sublease all or any part of the Premises without Landlord's prior written consent, which consent shall be at the sole discretion and option of Landlord. Any such sublease or assignment without consent shall be void, and shall, at the option of Landlord, terminate this Lease. No assignment of this Lease or subletting of the Premises, with or without the consent of Landlord, shall be deemed to release Tenant from any of its obligations under this Lease, nor shall any assignment or subletting be construed as permitting any further assignment or subletting except in accordance with this provision.

11. **Landlord's Right to Inspect.** Making reasonable efforts not to disrupt Tenant's business, Landlord or its agents and representatives may enter the Premises during normal business hours with prior notice for the purpose of inspection and verification of compliance with the terms and conditions of this Lease and to exhibit the Premises for any public purpose.

12. **Indemnification.** Tenant shall indemnify and hold harmless Landlord, its officers, employees and agents against any and all liability, loss, costs, obligations and causes of action, expenses, fines, penalties, claims, suits, demands, reasonable attorney's fees, expenses of litigation, expert witness fees, judgments, administrative proceedings and other incidental expenses (collectively called "Claims"), resulting from (i) injury or death of any person or damage to property occurring on or about the Premises or arising in conjunction with the use of the Premises by Tenant or others claiming under Tenant, or (ii) the breach, violation or nonperformance of any covenant, condition, or agreement in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed; provided, however, this indemnification shall not apply to Claims arising as a result of any negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents. This hold harmless and indemnity provision shall survive and remain in effect notwithstanding any termination, cancellation or expiration of this Lease.

13. **Insurance.** During the Term of this Lease, Tenant must obtain and keep in place (i) Workers Compensation Insurance as required by the laws of the Commonwealth of Virginia, and (ii) Comprehensive Commercial General Liability Insurance in an amount of not less than one million (\$1,000,000) dollars per occurrence with \$2,000,000 excess/umbrella coverage naming Landlord as an additional insured in the endorsement box. The endorsement to the policy would be that which is attached to Tenant's liability policy that acknowledges Landlord as an also insured on all policies Landlord requires to be endorsed. This shall be either a direct endorsement that actually names Landlord or a blanket endorsement that the Lease states that Landlord shall be named as an also insured on the insurance policy.

All policies of insurance required herein must be written by insurance companies licensed to conduct business of insurance in Virginia, and acceptable to Landlord. It is the responsibility of Tenant to immediately notify Landlord should any policy be canceled or materially modified. Failure to notify Landlord shall constitute a material breach of this Lease. Tenant must provide a certificate evidencing the existence of insurance to Landlord prior to the commencement of the Term of this Lease.

14. **Signage.** Tenant will not place any signs or other advertising matter or material on the exterior of the Property in which the Premises are located, or on the grounds, or parking areas. Tenant will be allowed signage on Landlord's Directory and as may be approved by the City Manager or her designee.

15. **Tenant's Personal Property.** Tenant shall be responsible for its property and equipment stored at the Premises. Landlord shall in no way be liable or responsible for any claims regarding loss or damage to any of Tenant's property or equipment housed inside or on the Premises, however caused.

16. **Compliance with Laws.** Tenant shall comply with all laws, ordinances or regulations adopted or established by federal, state or local governmental agencies or bodies. Tenant covenants that it is and will continue to be a Virginia non-stock corporation doing business as a not-for-profit financial cooperative in good standing in the Commonwealth of Virginia during the Term of this Lease.

17. **Public Health, Safety, and Welfare.** The Landlord has the right to limit or prohibit access to the Premises, without notice, in situations that threaten the public health, safety, and welfare, which shall be determined at the sole discretion of the Landlord. Such situations may include, but are not limited to, hurricanes, tropical storms, other severe weather events, unruly or violent crowds, crowds in excess of property capacity, pandemics, and other public health emergencies. The Landlord shall not be liable for any costs or expenses incurred by Tenant as a result of such limitation or prohibition to access.

18. **Surrender of Premises.** At the expiration of the Term, Tenant shall deliver possession of the Premises to Landlord in broom clean condition, reasonable wear and tear excepted and free and clear of all liens and encumbrances. All property that Tenant abandons, at Landlord's election, will become Landlord's property or be disposed of by Landlord with all disposal costs to be charged to Tenant. This Lease terminates without further notice at the expiration of the Term and no holding over shall be permitted.

19. **No Liens or Encumbrances.** Tenant must keep, or cause to be kept, the Premises free and clear of all liens and encumbrances of every kind whatsoever. If any lien is filed or purportedly filed against the Premises or any other property owned by Landlord, as a result of any act or omission of Tenant, upon the written request of Landlord, Tenant must cause the same to be released of record within 10 days after Tenant receives such written request.

20. **Default.** In the event of Tenant's breach of any of the provisions of this Lease, Tenant shall be in default and Landlord shall have all remedies available to it at law.

21. **Attorney's Fees.** In the event that Tenant defaults in the payments of Rent or in the performance of any of its obligations under this Lease, and Landlord places the matter in the hands of an attorney, Tenant agrees to pay Landlord's reasonable and customary attorney's fees, costs and expenses of litigation, and expert witness fees.

22. **Notices.** A notice, communication, or request under this Lease by Landlord to Tenant or by Tenant to Landlord shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

As to Landlord: City of Hampton
c/o City Manager
8th Floor City Hall
22 Lincoln Street
Hampton, Virginia 23669

Copy to: Cheran Cordell Ivery, City Attorney
8th Floor City Hall
22 Lincoln Street
Hampton, Virginia 23669

As to Tenant: Newport News Shipbuilding Employees' Credit Union, Inc.
D/B/A BayPort Credit Union
Attn: Jim Mears, President/CEO
One BayPort Way
Suite 350
Newport News, VA 23606

Any notice, communication, or request so sent shall be deemed to have been "given" (a) as of the next business day after being sent, if sent by nationally recognized express mail service, (b) as of the fifth business day after being sent, if sent by Registered or Certified U.S. Mail or (c) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

23. **Quiet Enjoyment.** Landlord covenants that it has the full right and authority to make this Lease and that if Tenant pays the rent and performs all of the terms of this Lease, Tenant shall peaceably and quietly enjoy and possess the Premises through the Term against the claims of anyone claiming by or through Landlord, subject only to the terms, conditions, covenants and agreements set forth in this Lease.

24. **Condemnation.** If during the Term of this Lease, all or a substantial part of the Premises is taken by eminent domain or sold under threat of taking by eminent domain, Landlord shall have the right to terminate this Lease by notifying the Tenant within 90 days after notice of the taking. If this Lease is terminated, Landlord shall refund to Tenant any rent prepaid beyond the effective date of termination.

25. **Waivers.** No waiver by Landlord or Tenant at any time, express or implied, of any breach of any term of this Lease shall be deemed a waiver of a breach of any other term of this Lease or a consent to any subsequent breach of the same or any other term. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account. Landlord may accept rent, or other sums payable or other benefits pursuant to this Lease and acceptance of same shall not be deemed to be a waiver of any prior default.

26. **Interpretation.** This Lease was prepared by both parties and it shall not, in the case of any ambiguity, be interpreted against or in favor of either party.

27. **Entire Agreement.** This Lease is a fully integrated final document. No oral statement or prior writing shall add to, vary or modify the terms of this Lease. Tenant is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by a writing executed by Landlord and Tenant.

28. **Severability.** If any section, paragraph, subparagraph, sentence, clause or phrase of this Lease shall be declared or judged invalid or unconstitutional, such adjudication shall not affect the other sections, paragraphs, subparagraphs, sentences, clauses or phrases of this Lease.

29. **Successors and Assigns.** The terms, conditions, covenants and agreements in this Lease to be kept and performed by Landlord and Tenant shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns.

30. **Paragraph Headings.** Headings to the paragraphs are mere catchwords and are illustrative only; they do not form a part of this Lease nor are they intended to be used in construing same.

31. **Governing Law / Venue.** This Lease shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Lease shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Any and all claims for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton or, if applicable, the United States District Court for the Eastern District of Virginia, Newport News Division.

32. **No Partnership.** Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venture or a member of a joint enterprise with Tenant.

33. **Authorized Signatures.** Each person signing this Lease represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Lease. Each party represents and warrants to the other that the execution and delivery of the Lease and the performance of such party's obligations hereunder have been duly authorized and that the Lease is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

34. **Recording.** Tenant shall not record this Lease without the written consent of Landlord.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be executed by their proper representatives as of the day and year first above written.

[SIGNATURES ON FOLLOWING PAGE]

**LANDLORD:
CITY OF HAMPTON, VIRGINIA**

By: _____
Mary B. Bunting, City Manager

ATTEST

Clerk of Council

APPROVED AS TO CONTENT:

Assistant City Manager

Finance Department

Public Works Division

APPROVED AS TO FORM &
LEGAL SUFFICIENCY:

City Attorney's Office

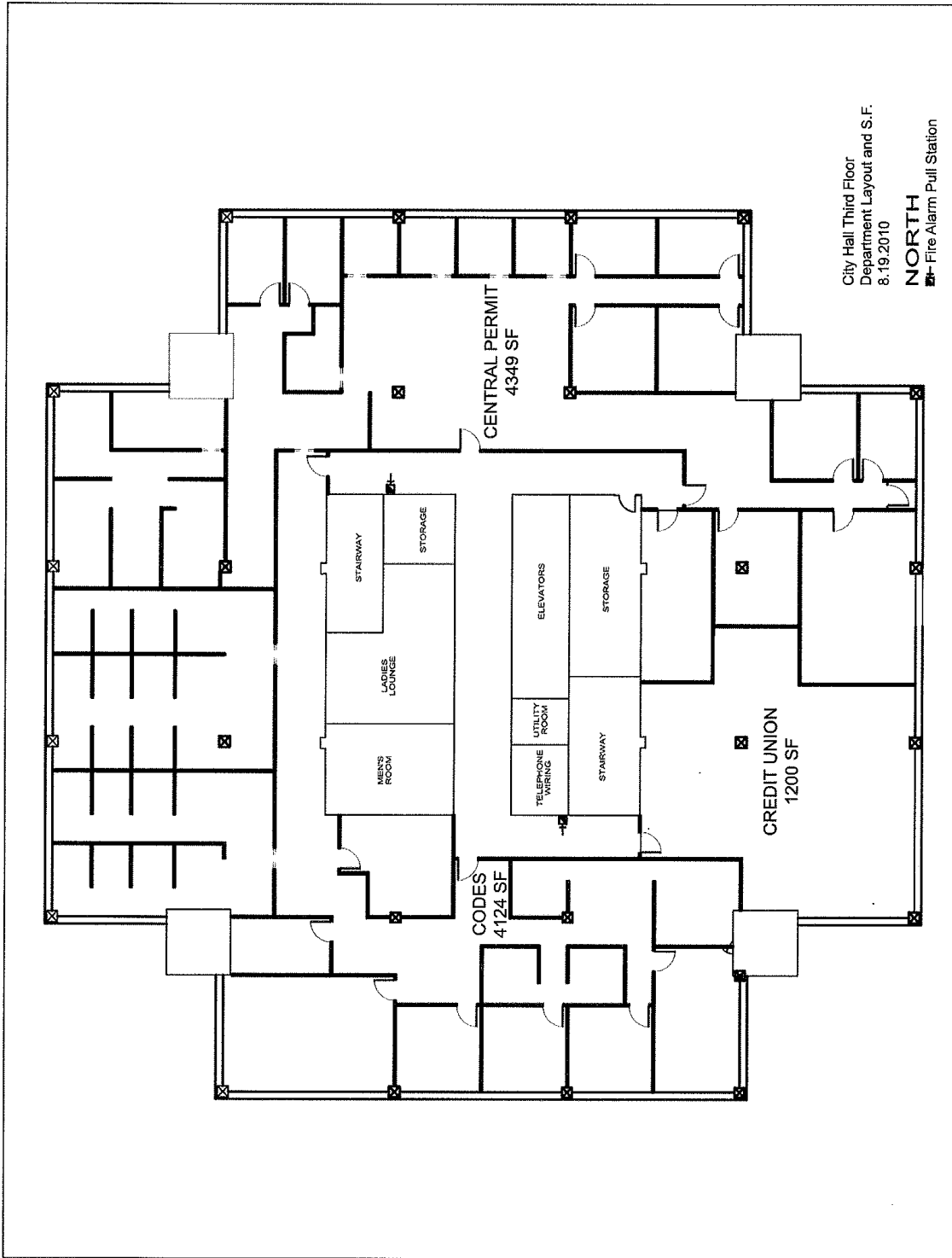
**TENANT:
NEWPORT NEWS SHIPBUILDING EMPLOYEES' CREDIT UNION, INC.
D/B/A BAYPORT CREDIT UNION**

By: J.B.M.
Name: JAMES B MEARS
Title: PRESIDENT / CEO

ATTEST

Corporate Secretary

EXHIBIT A: LEASED PREMISES



City Hall Third Floor
Department Layout and S.F.
8-19-2010
NORTH
Fire Alarm Pull Station