

DUMPSTER ENCLOSURE USE AGREEMENT

THIS DUMPSTER ENCLOSURE USE AGREEMENT (this “Agreement”) by and between the CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, located at 22 Lincoln Street, Hampton, Virginia 23669 (“City,” “Licensor,” and “Grantor”), and PARTNERSHIP for a new PHOEBUS, INC., a Virginia nonstock corporation, (“Licensee” and “Grantee”).

WHEREAS, the City is the owner of certain property located at 8 South Hope Street, Hampton, Virginia 23663, (LRSN 12001367) (“City’s Parcel”), that is improved with asphalt (the “Parking Lot”), as well as a brick enclosure situated on that Parking Lot at the corner of E. County Street and S. Hope Street, intended to house and shield a solid waste container (“Dumpster Enclosure”; with the Dumpster Enclosure and the portion of the Parking Lot in which is situated the “Licensed Improvement”), as further illustrated on **Exhibit A**, attached hereto;

WHEREAS, the Licensee is committed to creating and maintaining a vibrant and growing business district, comprised of multiple restaurant establishments and other retail;

WHEREAS, Licensee is aware of the immediate need of seven (7) commercial retail establishments operating adjacent to the City’s Parcel as identified on **Exhibit B** (“Commercial Tenants”) in need of additional accommodation for solid waste disposal (“Tenant Waste Disposal”); and

WHEREAS, the City agrees to grant Licensee a non-exclusive revocable license for use of the Dumpster Enclosure for the sole purpose of Tenant Waste Disposal by and for only the Commercial Tenants, subject to the terms, conditions, and agreements specified herein.

NOW, THEREFORE, in consideration of these covenants, the parties agree as follows:

1. The recitals stated above are true and accurate and are incorporated herein.
2. The City agrees to grant a non-exclusive revocable license (the “Revocable License”) to Licensee for use of the Licensed Improvement to house a solid waste container for the Commercial Tenants’ Tenant Waste Disposal for a term of five (5) years, commencing on October 1, 2021.
3. Licensee agrees to contract with a private vendor (“Vendor”) and provide for Tenant Waste Disposal at its sole cost and expense by contracting with a private waste disposal provider (the “Vendor”;

and said contract the “Vendor Contract”), to house a solid waste disposal container within the Dumpster Enclosure in the Licensed Improvement to be made available solely to the Commercial Tenants for Tenant Waste Disposal. Said Vendor Contract shall (1) provide for not less than daily solid waste collections on each of Monday – Saturday to preclude waste overflows and limit public health hazards; and (2) shall obligate the Vendor to maintain the following insurance to cover any damage caused directly or indirectly by the Vendor and/or its agents, guests and assigns, to the Licensed Improvement, the remainder of the Parking Lot, and the public streets in the vicinity of the Licensed Area:

- a. Commercial General Liability per occurrence \$1,000,000; \$2,000,000 aggregate;
- b. Commercial Auto Liability, combined single limit \$1,000,000; and
- c. Workers’ Compensation insurance, as required by law.

Such insurance shall be with a company satisfactory to the City. Any deductible provision of said insurance shall be subject to the approval of the City’s Risk Management Administration. Such insurance specifically shall insure the Licensee and the City against all liability assumed by them under the terms of this Agreement as well as any liability imposed by law and shall insure both the City and Licensee but shall be so endorsed as to create the same liability on the part of the insurer as if separate policies had been written for the City and Licensee. Licensee shall provide the City’s Risk Management Administrator with a Certificate of Insurance (“COI”) naming the Licensee and the City and its agents, guests, volunteers, employees, and officials as additional insureds, which shall be in a form satisfactory to the City and the City Attorney’s Office. Licensee shall provide the City’s Risk Management Administrator the COI annually without demand. Each insurer mentioned in this section shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to the City that it will give the City at least 30 days’ written notice before the policy or policies in question shall be altered or cancelled; and shall further agree to waiver of subrogation on all lines of liability. In the event the Licensee fails to obtain from the Vendor what is required by the provisions of this Paragraph 3, the Licensee shall be required to comply with those provision in the same manner as the Vendor.

4. Licensee further agrees to keep the Licensed Improvement locked at all times, but through agreements with the Commercial Tenants, may provide each such Commercial Tenant with a copy of said key for access, so long as each such Commercial Tenant agrees in writing on either of the forms set forth in the attached **Exhibit C** to:

- a. Only use the Licensed Improvement for the purpose of Tenant Waste Disposal and to not use any other area of the Parking Lot or the public streets in the vicinity of the Licensed Improvement for Tenant Waste Disposal;
- b. Be responsible for any repair or replacement of the Licensed Improvement, the Parking Lot, and public streets in the vicinity of the Licensed Area for any damage to those areas that may result from said Commercial Tenant's use and access to the Licensed Improvement, normal wear and tear excepted;
- c. Keep the Licensed Improvement and the Parking Lot in a neat and clean manner, free from noxious fumes and any obstructions so as not to cause disruption or hazard to the City, pedestrian, or vehicular traffic on or through the property;
- d. Abide by all ordinances, laws, rules, and regulations related to Tenant Waste Disposal, including, but not limited to, the disposal of oils and grease;
- e. Not engage in any illegal dumping, to include, but not be limited to, the disposition of chemicals, hazardous materials, etc.;
- f. Not modify the Licensed Improvement;
- g. Keep the access key provided by the Licensee secure, and to not make or cause to be made any copy of the key provided to the Commercial Tenant; and
- h. Assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of the Commercial Tenant, their subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform as required hereunder; and agrees to indemnify and hold harmless the Licensee and the City, and its agents, volunteers, guests,

employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by an indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and/or (c) the access to the Licensed Area, other than as set forth in this Agreement by the Commercial Tenant or those for whom the Commercial Tenant is legally liable. Upon written demand by the City or Licensee, a Commercial Tenant shall assume and defend at Commercial Tenant's sole expense any and all suits or defense of claims made against Licensee or the City, its agents, volunteers, guests, employees, or officials. The provisions of this Paragraph 4(h) shall survive the termination of this Agreement.

If Licensee permits a Commercial Tenant or any other to access the Licensed Area without first obtaining the agreed to writing as set forth in this Paragraph 4, Licensee shall be responsible for compliance with this Paragraph 4 in the same manner as a Commercial Tenant.

5. This Agreement pertains only to the Licensed Area and shall not pertain to the other areas of the City's Parcel, any other property owned by the Grantor, or the property of any other property owner in the vicinity of the Licensed Area, except as expressly stated herein, or as necessary to access the Licensed Improvement.

6. The City has the right to prohibit or otherwise limit access to the Licensed Improvement, the Parking Area, or public streets in the vicinity of the Licensed Improvement, without notice, in situations that threaten the public health, safety, and welfare, which shall be determined at the sole discretion of the City. Such situations include, but are not limited to, hurricanes, tropical storms, and other severe weather events, unruly or violent crowds, and crowds in excess of property capacity. The City shall not be liable for any costs or expenses incurred by Licensee as a result of any such closure or limited access.

7. During the Term, Licensee shall at its sole cost and expense a) keep and maintain the Licensed Area in the same condition as existed on the Commencement Date (ordinary wear, tear and any act of God or casualty of nature excepted); and b) obtain and maintain sufficient security to ensure the

safety of the general public. Licensee shall not modify or alter the Licensed Improvement or the Parking Lot in anyway without the prior express written consent of the Licensor. Any such approved modifications or alterations shall be the property of the Licensor upon the termination of this Agreement, without cost to the Licensor.

8. Nothing in this Agreement shall be construed as the City's waiver of its rights of sovereign immunity or any other defenses and immunities available to municipal corporations

9. Any notice, communication, or request under this Agreement by the City or Licensee 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 City/Grantor:

City of Hampton, Virginia
Director of Public Works
22 Lincoln Street, 4th Floor
Hampton, Virginia 23669

Copy to:

City of Hampton, Virginia
City Attorney's Office
22 Lincoln Street, 8th Floor
Hampton, Virginia 23669

City of Hampton, Virginia
Director of Economic Development
1 Franklin Street, Suite 600
Hampton, Virginia 23669

As to Licensee/Grantees:

Partnership for a new Phoebus, Inc.
Attn: President
37 E Mellen Street
Hampton, Virginia 23663

Either party may change his/her/its address for notice purposes by giving written notification thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

10. Failure of the City to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, or condition herein contained.

11. This Agreement shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, and all parties shall be jointly and severally liable hereunder. Notwithstanding this provision, Licensee shall not sublease its rights and duties under this Agreement or permit another party access to or use of the Licensed Improvement, except as expressly set forth herein, without the prior written consent of the City.

12. Termination and Revocation. In addition to any other method prescribed herein, the Revocable License permitted herein may terminated or revoked as follows:

- a. Licensee may terminate this Agreement and any rights and obligations granted herein at any time upon 30 days written notice to the City delivered pursuant to the provisions of Paragraph 9 herein. Licensee shall comply with any reasonable conditions imposed by the City regarding said termination, including but not limited providing an alternative plan for the disposal of Tenant Waste by the Commercial Tenants;
- b. Licensor may revoke this Agreement for any reason upon delivery to Licensee 30 days' written notice of revocation to be delivered pursuant to the provisions of Paragraph 9 herein.
- c. At the expiration or sooner termination of this Agreement or the revocation of the Revocable License granted for any reason, Licensee shall (1) provide notice to and retrieve keys from each Commercial Tenant participating hereunder; and (2) peacefully and quietly surrender to the City the rights granted hereunder.

13. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton, and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to choice of laws.

14. In the event Licensee is for any reason or through any cause is in default under any terms of this Agreement, the City shall give Licensee written notice of such default as set forth in Paragraph 9 of this Agreement. Unless otherwise provided, Licensee shall have 10 days from the date such notice is deemed given in Paragraph 9 in which to cure the default, but such time may be extended by the City as long as Licensee is making a good faith effort to effect such cure and prove such good faith effort to the satisfaction of the City. Upon Licensee's failure to cure the default, the City immediately may cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensee shall cease performance of any further activities under the Agreement.

16. This Agreement contains the final and entire agreement between the parties hereto and contains all the terms and conditions agreed upon; it being the intent of the parties that neither shall be bound by any terms, conditions, or other representations not herein written.

17. The individuals executing this Agreement represent and warrant that each are duly authorized to execute it in their representative capacities as indicated, and are able to bind each respective party to perform the obligations set forth herein. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original without production of any other counterpart. Any signature delivered via facsimile or other electronic means shall be deemed an original signature hereto.

18. Other than as maintained and required of the Clerk of City Council with respect to the approval of this Agreement by the City Council of the City of Hampton, Virginia, neither the City nor Licensee shall record this Agreement in the land records maintained by the Office of the Clerk of the Circuit Court of the City of Hampton, Virginia or in any other comparable forum or location without the written consent of the City.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

WITNESS the following signatures and seals of the parties.

LICENSOR/GRANTOR:

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager/Authorized Designee

Date: _____

Approved as to Form and Legal Sufficiency:

By: _____
City Attorney's Office

Approved as to Content:

By: _____
Department of Public Works

By: _____
Department of Economic Development

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LICENSEE/GRANTEE:

PARTNERSHIP for a new PHOEBUS, Inc.

By: _____

Its: _____

Date: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

I hereby certify on this ____ day of _____, 20____, that the foregoing Dumpster Use Agreement was acknowledged before me by _____ (*name*), _____ (*title*), on behalf of Partnership for a new Phoebus, Inc.. She/He is known to me personally or has provided _____ as identification.

Notary Public

My Commission Expires: _____
Notary Registration Number: _____

[END OF SIGNATURES]

EXHIBIT A
LICENSED IMPROVEMENT, PARKING LOT AND SURROUNDING AREA

EXHIBIT B
COMMERCIAL TENANTS

1. 1865 Brewery LLC t/a 1865 Brewing Company
2. Baker's Wife Bistro, LLC t/a The Baker's Wife Bistro & Bar
3. Foxtail Winery, LLC t/a Foxtail Wine Bar
4. Phoebus Dive Bar, LLC t/a Phoebus Dive Bar
5. Tomoni, Inc. t/a Cutting Edge Hair Salon
6. Scratch Bakery Williamsburg, LLC t/a Scratch Bakery
7. Mango Mangeaux, LLC t/a Mango Mangeaux

EXHIBIT C
DUMPSTER USE AGREEMENT
TENANT CONSENT, ACKNOWLEDGEMENT, AND AGREEMENT

(See Two Separate Alternative Documents Attached)

DUMPSTER USE AGREEMENT
COMMERCIAL TENANT
CONSENT, ACKNOWLEDGEMENT, AND AGREEMENT

Commercial Tenant Legal Name: _____

Commercial Tenant Trade Name(s): _____

Tenant Address: _____

I hereby acknowledge and agree that I, as a duly authorized representative of the Commercial Tenant named above (1) have received a copy of the Dumpster Use Agreement between the City of Hampton, Virginia and the Partnership for a new Phoebus, Inc., (2) have read and understand said Agreement; (3) expressly agree to bound by the terms thereof, including the provisions of Paragraph 4 as they are restated below; and (5) have received from the Licensee a key to access the Dumpster Enclosure.

Dumpster Use Agreement Excerpt - Paragraph 4 – Commercial Tenant Obligations:

- a. Only use the Licensed Improvement for the purpose of Tenant Waste Disposal and to not use any other area of the Parking Lot or the public streets in the vicinity of the Licensed Improvement for Tenant Waste Disposal;
- b. Be responsible for any repair or replacement of the Licensed Improvement, the Parking Lot, and public streets in the vicinity of the Licensed Area for any damage to those areas that may result from said Commercial Tenant's use and access to the Licensed Improvement, normal wear and tear excepted;
- c. Keep the Licensed Improvement and the Parking Lot in a neat and clean manner, free from noxious fumes and any obstructions so as not to cause disruption or hazard to the City, pedestrian, or vehicular traffic on or through the property;
- d. Abide by all ordinances, laws, rules, and regulations related to Tenant Waste Disposal, including, but not limited to, the disposal of oils and grease;
- e. Not engage in any illegal dumping, to include, but not be limited to, the disposition of chemicals, hazardous materials, etc.;
- f. Not modify the Licensed Improvement;
- g. Keep the access key provided by the Licensee secure, and to not make or cause to be made any copy of the key provided to the Commercial Tenant; and

h. Assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of the Commercial Tenant, their subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform as required hereunder; and agrees to indemnify and hold harmless the Licensee and the City, and its agents, volunteers, guests, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by an indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and/or (c) the access to the Licensed Area, other than as set forth in this Agreement by the Commercial Tenant or those for whom the Commercial Tenant is legally liable. Upon written demand by the City or Licensee, a Commercial Tenant shall assume and defend at Tenant Tenant's sole expense any and all suits or defense of claims made against Licensee or the City, its agents, volunteers, guests, employees, or officials. The provisions of this Paragraph 4(h) shall survive the termination of this Agreement.

COMMERCIAL TENANT:

Date: _____ By (Signed): _____
By (Printed): _____
Its: _____

Receipt acknowledged by Partnership for a new Phoebus, Inc., with copy provided to the City:

By: _____ Date: _____

DUMPSTER USE AGREEMENT
RESTAURANT TENANT
CONSENT, ACKNOWLEDGEMENT, AND AGREEMENT

Restaurant Tenant Legal Name: _____

Restaurant Tenant Trade Name(s): _____

Restaurant Address: _____

I hereby acknowledge and agree that I, as a duly authorized representative of the Restaurant Tenant named above (1) have received a copy of the Dumpster Use Agreement between the City of Hampton, Virginia and the Partnership for a new Phoebus, Inc., (2) have read and understand said Agreement; (3) expressly agree to bound by the terms thereof, including the provisions of Paragraph 4; and (5) have received from the Licensee a key to access the Dumpster Enclosure.

RESTAURANT TENANT:

Date: _____

By (Signed): _____

By (Printed): _____

Its: _____

Receipt acknowledged by Partnership for a new Phoebus, Inc., with copy provided to the City:

By: _____

Date: _____