

THE WOODLANDS GOLF COURSE RESTAURANT
LEASE AGREEMENT

THIS LEASE AGREEMENT (the “**Lease**”), made this _____ day of January, 2017 by and between the **CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia, located at 22 Lincoln Street, Hampton, Virginia 23669 (the “**City**”), and **MUTZY, INC.**, a Virginia corporation having a principal place of business at 1405 East Pembroke Avenue, Hampton, VA 23663 (“**Tenant**”). The City and Tenant shall be collectively referred to as the “**Parties**.”

WITNESSETH:

The City shall lease to the Tenant and the Tenant shall rent from the City that certain portion of the Woodlands Golf Course Clubhouse (the “**Clubhouse**”) of approximately 1,513 square feet located at 9 Woodland Road (City LRSN: 12000817) as outlined on the floor plan attached hereto and made a part hereof as Exhibit “**A**” (the “**Leased Premises**”) together with that certain equipment to be provided by the City as listed on Exhibit “**B**” (the “**City Tangible Property**”) hereto attached and made a part hereof, upon the terms and conditions hereinafter set forth.

1. USE OF PREMISES.

(a) The Leased Premises shall be used only as a full service restaurant and catering facility for the Clubhouse and for the retail sale of food, beverages, and sundry items over the counter or by vending cart or machines in the concession area and on the golf course. Tenant will be allowed access to other areas of the Clubhouse and golf course facilities as authorized at the sole discretion of the Golf Course Manager by written permission, including, but not limited to, use of the Atrium for catering events. Tenant shall not use, or allow the Leased Premises to be used, for any other purpose other than expressly stated in this Lease. Tenant shall not conduct or allow to be conducted any illicit activity in or upon the Leased Premises at any time.

(b) Tenant shall obtain necessary licenses from the Alcohol Beverage Control Board for the Leased Premises and Tenant’s catered events for the serving of alcoholic beverages at catered events or on the golf course. Alcoholic beverages shall not be served except as approved by the City’s Director of Parks, Recreation, and Leisure Services (the “**Director**”). This Lease is expressly conditioned upon the Tenant obtaining and maintaining in full force and effect an approved ABC on-premises and catering licenses. Failure to obtain and maintain said licenses shall vest in the City the right and option to immediately terminate this Lease without notice to Tenant.

2. TERM OF LEASE. The term of this Lease shall commence at 12:01 a.m. on January _____, 2017 and shall continue for one (1) year ending at 12:00 p.m. January _____, 2018 (the “**Term**”), unless sooner terminated as provided in this Lease.

3. RENEWAL TERMS. Provided Tenant is not in default, there shall be four (4) one (1) year extensions of the term of this Lease (“**Renewal Term**”) upon mutual agreement of the City and Tenant and subject to the right of the City to renegotiate the terms and conditions applicable during any Renewal Term. Tenant shall notify the City in writing of its intention to exercise its right to extend the Lease at least ninety (90) days prior to termination date of the Term or any Renewal Term. In the event, Tenant fails to give the required ninety (90) days prior written notice, the City shall not be obligated to renew the Lease.

The extension provisions stated herein are conditioned and limited against both parties to the extent that the cumulative term of this Lease plus all Renewal Terms shall not extend beyond January ____, 2021.

4. RENT/COMMISSION/TAXES

(a) Rent shall not be payable during the Initial Term of the Lease in furtherance of Tenant’s establishment of a successful operation, but shall be due and payable monthly during all Renewal Terms. If the renewal option is exercised, Tenant agrees to pay the City as rent for the Leased Premises a guaranteed minimum annual rental of **Six Thousand and 00/100 Dollars (\$6,000.00)**, (the “**Rent**”) payable in equal monthly installments of **Five Hundred and 00/100 Dollars, (\$500.00)**. Each monthly installment shall be payable to the City in advance upon the first day of each calendar month of the Term and any Renewal Term. Any renegotiated increase in the rent shall not exceed three percent (3%) of the then current Rent for each renewal year.

(b) In consideration of the exclusive rights and privileges herein granted by the City, Tenant shall pay to the City each month, in addition to the Rent, a commission of the gross sales generated in, upon, or from the Leased Premises or vending carts and concessions during the preceding calendar month (the “**Commission**”). The Commission shall be paid in cash or by check made payable to the City, and shall be due and payable within ten (10) days following the end of each month and based upon the following percentages:

- \$0-\$49,999 = 0% gross revenue
- \$50,000-\$99,999 = 1% gross revenue
- \$100,000-\$199,999 = 2% gross revenue
- \$200,000-\$299,999 = 3% gross revenue
- \$300,000 + = 4% gross revenue

(c) In the event of Tenant's failure to pay the full amount of any Rent or Commission when due, Tenant shall be required to pay a late charge in an amount equal to ten per cent (10%) of the unpaid balance thereof, together with interest at the rate of eighteen per cent (18%) per annum, until the full amount of accrued Rent or Commission and interest has been paid. No payment of any amount of Rent or Commission, or any acceptance thereof by the City, shall be construed as a waiver of the City’s rights to collect the balance of Rent or Commission due or as a waiver of the Lease.

(d) The term "**gross sales**," as used in this Lease, shall mean the actual gross receipts, whether wholly or partly for cash or on credit, but excluding monies collected for taxes, received by or for the benefit of Tenant from all sales or other business conducted on or upon the Leased Premises or in connection with the business of Tenant at the Leased Premises. Notwithstanding the foregoing, gross sales shall be determined after deducting the following: (i) all sales, use, excise, occupational and other taxes which may now or hereafter be payable by Tenant in connection with such sales, (ii) any refunds, credits, allowances and adjustments made by Tenant; (iii) any gratuities or service charges received for catering services. In addition, only the actual amounts received by Tenant from sales made by subcontractors (net of commissions and other compensation payable to subcontractors), if any, shall be included in gross sales.

(f) All Rent and Commissions shall be payable at the Woodlands Golf Course, 9 Woodland Road, Hampton, Virginia 23663.

(g) Tenant shall pay all applicable personal property taxes on any equipment, fixtures, or furnishings that Tenant supplies and utilizes on the Leased Premises. City shall not be responsible for payment of any such taxes.

5. BUSINESS RECORDS.

(a) Tenant shall keep on the Leased Premises, or at a location made known to the City by Tenant, for a period of at least one (1) year following the end of each year during the Term or any Renewal Term of this Lease, a complete and accurate record of all gross sales of merchandise and service and all other revenue derived from business conducted at, in, from and upon the Leased Premises during such lease year. Tenant further agrees to keep for at least one (1) year after the expiration of each preceding lease year all original sales records, sales slips, sales checks and other original sales records.

(b) Accurate non-resettable cash registers or an alternative form or other modern system shall be furnished, installed, kept and used by Tenant within the Premises, which register or system shall record and preserve, in complete detail, all items comprising gross sales. All such items, including sales tax reports, business and occupation tax reports, and all other records and books kept by Tenant in relation to its business conducted at the Leased Premises, shall be open to the inspection and audit by the City and its agents at a time mutually agreed upon by the Tenant. Such records shall be kept separately and apart from any records maintained by Tenant in connection with any other business enterprise. The receipt by the City of any certified audit statement of Tenant's gross sales, or any payment of Commissions for any period, or the failure of the City to make an audit for any period shall not be binding upon the City as to the correctness of such statement or payment or bar the City from collecting at any time up to one year following the end of each lease year the correct Commission due for said period.

6. HOURS OF OPERATION.

(a) The Leased Premises shall be open for business Monday through Sunday at specified hours during the regular hours of operation of the Clubhouse, with the exception of holidays observed by the Clubhouse or as otherwise approved by the Golf Course Manager.

(b) In the event major repairs to the Leased Premises are necessary, and such repairs cannot be made practicably during non-business hours, Tenant shall be required to close the food services restaurant while such repairs are being performed.

7. SERVICE.

(a) It will be the direct responsibility of Tenant to manage the Premises in accordance with such policies, standards, and procedures as may be established by the City and administered by the Golf Course Manager.

(b) Tenant shall prepare and serve food and beverage on the Clubhouse's regular business days. Advertised meal times will be promptly observed regarding opening of the restaurant.

(c) Tenant shall provide catering services, and prepare and serve food and beverage to special groups on an "as requested" basis.

(d) During the Term of this Lease and any Renewal Term, Tenant shall have the exclusive rights to operate the restaurant, catering services, vending machine services, alcoholic beverage services and concession business contemplated herein (from both permanent and portable locations), throughout the Premises, including the golf course. The City shall not authorize the conduct of same or similar services or concessions within the Leased Premises.

8. PERSONNEL.

(a) Tenant shall employ full-time, on-site Managers, acceptable to the City, responsible for all food service functions at the Leased Premises and sufficient staff to operate food services and any scheduled catering events.

(b) Tenant will recruit, train, supervise, direct, discipline, and if necessary, discharge any and all of its personnel working in the Premises.

(c) Tenant shall require employees to comply with all instructions, regulations, and codes of conduct as specified by the City.

(d) Tenant shall require all employees to meet the appropriate health standards prescribed by municipal, state and federal laws and regulations.

(e) Employees of Tenant whose duties require direct contact with customers must be able to effectively communicate regarding menu items and other matters involving customer service.

(f) At the expense of Tenant, employees of Tenant shall be appropriately attired and easily recognized when performing their work assignments at the Premises. The term "appropriate attire" is interpreted to include all apparel, name tags, hats, hair nets, etc. Attire will

be distinctive such as a uniform so as to clearly identify Tenant's personnel. All uniforms shall be of the same type and style and shall be clean, unstained, well-fitting, and repaired and shall comply with the established standards for Clubhouse staff dress code.

(g) Tenant shall assure that the Manager or an immediate assistant will be in the Premises during all hours of operation and will be available to customers during peak hours.

(h) Tenant shall bear financial responsibility for any vandalism or loss due to dishonest acts on the part of Tenant's employees.

(i) Tenant shall notify the Golf Course Manager of impending labor, employee, vendor disputes, or any other circumstances that could adversely affect the operation of the food services or catering operations.

9. **GOODS AND FOODSTUFFS.** Tenant shall keep upon the Leased Premises, or have ready access to, sufficient quantities of goods and foodstuffs to have the same available for use without disruption of the business of Tenant. All foods served or sold by Tenant shall be of good quality and shall meet or exceed all applicable federal, state and local regulations and standards. Tenant shall be responsible for providing a variety of quality prepared foods at a reasonable price.

10. **QUALITY STANDARDS.** Tenant shall maintain the high-quality standards of the City through strict adherence to established purchase specifications, standard recipes, cooking techniques and temperatures, and portion sizes. The Golf Course Manager shall have the discretion and authority to determine if the pricing and quality of the food served by Tenant meets the standards articulated in Paragraphs 8 and 9 of this Lease. In event the Golf Course Manager determines that the pricing and quality of the food served by Tenant does not meet the standards articulated in this Lease, the Golf Course Manager shall give Tenant seven (7) days to correct the pricing and/or food quality which shall satisfy the Golf Course Manager. If Tenant has not improved the pricing and/or food quality within the seven (7) days, in the opinion of the Golf Course Manager, this condition shall be deemed a breach of the Lease.

11. **SANITATION AND SAFETY.** Tenant shall maintain, at all times, the Premises in a clean and sanitary manner in accordance with all federal, state, and municipal laws, codes, and regulations. Tenant shall train all employees to follow a "clean as you go" policy. Tenant shall coordinate pest control services with those arranged by the City for the food service area.

12. **PERFORMANCE STANDARDS.** In addition to the requirements specified in this Lease, the following performance standards are required of Tenant.

(a) Current menus posted at all times.

(b) Restaurant manager or immediate assistant shall be on serving area or dining area floor during lunch/peak period to monitor operations and assist customers.

(c) A qualified cashier should be available at all times.

(d) Tenant is expected to be especially attentive about cleanliness in all areas: serving, dining, cooking, kitchen, entrance ways and all equipment.

13. REFUSE. City shall arrange for the regular pick up of trash and garbage, provided such refuse be placed in proper and adequate containers to be provided by Tenant. Grease shall be properly disposed of by Tenant and shall not be disposed of through the building sanitary sewer system. The removal of blockages in plumbing drain lines in the Leased Premises shall be the responsibility of Tenant.

14. UTILITIES/SERVICES.

(a) The City shall provide the following utilities and services for the Premises: electricity; gas; heating per City building policies; air conditioning per City building policies; hot and cold running water; ventilation; building maintenance and repairs for major structural items such as surfaces, walls, and ceiling, (except for damages caused by patrons of the restaurant or employees of Tenant), and the replacement of light bulbs in all light fixtures requiring relamping; and pest control services.

(b) The City shall not guarantee the uninterrupted provision of the above utilities and service except to insure that all reasonable and diligent efforts will be pursued in restoring any interrupted service. The City shall not be liable for product or revenue loss which may result from interruptions or failure of the above services.

15. OFFICE EQUIPMENT. Tenant shall be responsible for procuring, installing, and maintaining its own telephone, copier, computer, and general office equipment used in the Premises and paying any service charges related thereto. Unless otherwise authorized, Tenant shall be prohibited from using telephone, copier, computer or general office equipment that is owned, rented, or leased by the Clubhouse.

16. MAINTENANCE OF LEASED PREMISES AND EQUIPMENT.

(a) Tenant agrees to take good care of the Leased Premises, and shall not suffer or permit any waste or injury thereto. Tenant shall, at all times at Tenant's sole cost and expense, keep the Leased Premises and every part thereof in good condition and repair (ordinary wear and tear, damage thereto by fire, flood, earthquake, act of nature or elements, excepted), including cleaning of and replacement of exterior broken glass, light bulbs and fixtures, and plumbing stoppage.

(b) City shall comply with all requirements of applicable building and codes and ordinances materially affecting health and safety, and shall keep the Leased Premises in fit and habitable condition. City shall repair and maintain the structural portions of the Leased Premises, including base plumbing, heating, air conditioning, and electrical systems installed or furnished by City, the roof, the exterior, unless the necessity for such maintenance and repairs are in any way caused by the act, neglect, fault omission of any duty by Tenant, its employees, agents, invitees, customers or guests, in which case Tenant shall pay to City the reasonable cost of such maintenance and repairs.

(c) City shall not be liable for any failure to make any such repairs or to perform any maintenance to the Leased Premises for a reasonable period of time unless City receives written notice of the need for such repairs or maintenance from Tenant and fails to make such repairs or perform such maintenance for a reasonable period of time following such notice by Tenant. There shall be no abatement of Rent or Commission and no liability of City by reason of injury to or interference with Tenant's business arising from making of repairs, alterations or improvements in or to any portion of the Leased Premises or in or to fixtures, appurtenances and/or equipment therein. Tenant waives the right to make repairs at City's expense under any law, statute or ordinance now in effect.

(d) In addition to Tenant's own equipment, Tenant shall be responsible for maintaining all of City's Tangible Property in workable order at Tenant's sole cost and expense in good condition and repair and shall be responsible for furnishing a maintenance schedule to show that proper maintenance will be performed at appropriate intervals. Tenant is responsible for all repairs to City's Tangible Property. In the event any City Tangible Property cannot be repaired in a cost effective manner in the sole discretion of the Director of Parks, Recreation, and Leisure services, or by his Designee, then City will replace the Tangible Property in a reasonable amount of time. City shall not be liable for any failure to replace City Tangible Property for a reasonable period of time unless City receives written notice of the need for a determination for replacement of Tangible Property from Tenant and City fails to make a determination as to replacement for a reasonable period of time following such notice by Tenant. There shall be no abatement of Rent or Commission and no liability of City by reason of injury to or interference with Tenant's business arising from City's replacement of Tangible Property. Tenant waives the right to purchase replacement Tangible Property at City's expense under any law, statute or ordinance now in effect.

(e) Any equipment, furnishing or supplies to be provided in addition to the City's Tangible Property shall be at the discretion and sole expense of Tenant and shall remain the sole property of Tenant. In the event that any such additional equipment requires additional space or power, Tenant must seek the permission of the Director prior to installation. The cost of installing or removing additional equipment shall be at the sole expense of Tenant unless otherwise agreed upon with the City. Tenant shall insure all of its own Tangible Property that it uses on the Leased Premises and shall provide proof of insurance upon the City's request.

(f) Tenant is responsible for daily cleaning and housekeeping of the Leased Premises and will maintain high standards of appearance and cleanliness. Tenant will promptly replace or repair equipment, furniture, carpet or furnishings that have been accidentally or willfully damaged, stained or misappropriated by Tenant or its customers, but excluding fair wear and tear as would normally occur over extended use.

(g) Tenant is responsible and liable for any damage to the Clubhouse and its furnishings that might occur as a result of the actions of Tenant during catering events that take place outside of the Leased Premises.

(h) Tenant shall be responsible for maintaining and repair of grease traps located in the Leased Premises.

17. ASSIGNMENT OR SUBLETTING. Tenant shall not assign this Lease or sublet or mortgage or encumber the Leased Premises or any portion thereof, or permit the Leased Premises or any portion thereof to be used by any person or entity other than Tenant or its patrons without the prior written consent of the Director, such consent not to be unreasonably withheld or delayed.

18. ALTERATIONS AND ADDITIONS.

(a) Tenant shall not make, or cause or allow to be made, any alterations, additions or improvements to the Leased Premises without the prior written consent of the Director.

(b) Tenant shall not place, or cause or allow to be placed, any sign or other advertising display or device upon or about the Leased Premises, without the prior written consent of the Director.

19. FIRE AND OTHER EMERGENCIES. Tenant shall immediately call the City of Hampton Fire Department and notify the Golf Course Manager in the event of fire or other emergency. All employees shall be trained by Tenant and shall comply with respect to fire, civil defense, bomb threat, and other emergency procedures established by the City.

20. SECURITY AND ACCESS. Tenant's security perimeter includes all of the food service space previously described and identified. The areas under Tenant's jurisdiction shall be its responsibility relative to security at all times. Designated employees of Tenant shall have the responsibility to secure the areas following normal operating hours; designated employees of Tenant shall have the responsibility for determining that all appropriate equipment and lights have been turned off, and appropriate doors locked as necessary when facilities are closed. A complete set of keys (excluding those used for cash control) for the Leased Premises shall be supplied by the Golf Course Manager at the commencement of the Lease Agreement and shall be returned to the Golf Course Manager promptly upon termination of the Lease Agreement.

21. LIENS AGAINST LEASED PREMISES. Tenant agrees to do or permit no act which will cause a lien of any nature to be placed upon the Leased Premises, and further agrees to indemnify the City for any and all liabilities incurred by Tenant, or its agents or employees, claimed or charged against the Leased Premises. This provision shall survive the expiration or the termination of this Lease.

22. INDEMNITY AND HOLD HARMLESS. It is understood and agreed that Tenant hereby assumes the entire responsibility and liability for any and all injury or damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Tenant, its subcontractors, agents or employees under or in connection with this Lease or the performance or failure to perform any work required by this Lease. Tenant shall save harmless and indemnify the City and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including reasonable attorney's fees and litigation expenses, which any indemnified party may pay or incur as the result of claims or suits due to,

arising out of, or in connection with (a) any and all such damage, real or alleged, (b) the violation of any law applicable to this Lease, and (c) the performance of the work by Tenant of those for whom Tenant is legally liable. Upon written demand by the City, Tenant shall assume and defend at Tenant's sole expense any and all such suits or defense of claims. This indemnification provision shall survive the expiration or termination of this Lease.

23. **INSURANCE.** Tenant agrees to secure and maintain in full force and effect at all times during the period this Lease is in effect, the following policies of insurance:

Type of Insurance	Amount
Comprehensive General Liability Coverage (including bodily injury, personal injury, property damages, contractual liability and products coverage)	\$2,000,000 combined single limit
Workers Compensation Insurance	*As required by statute
Alcoholic Beverage Liability Insurance	\$1,000,000
Comprehensive Automobile Liability Insurance	\$300,000
Umbrella or Excess Liability	Additional \$10,000,000
Personal Property Insurance	Replacement Cost Basis
Blanket Employee Dishonesty	\$100,000

All policies shall name the City as an additional insured. Tenant shall provide proof of requisite insurance to the City's Risk Manager in the form of a Certificate of Insurance, as well as an endorsement to the policy naming the City as an additional insured. The endorsement is an actual document provided by the insurance company that states the City has been added to the policy as an additional insured. All insurance policies required herein shall be written by insurance companies licensed to conduct the business of insurance in the Commonwealth of Virginia, and acceptable to the City. In addition, all such insurance policies shall include a provision that the insurance will not be cancelled or materially modified by the Contractor without having provided the City written notice at least thirty (30) days prior to any such cancellation or modification. Tenant shall be responsible for immediately notifying the City should any policy be cancelled. Failure to notify the City shall constitute a material breach of this Lease.

In addition, the Tenant shall maintain a policy or policies of comprehensive general liability insurance in connection with any property owned by Tenant and located on the Leased Premises. The Tenant shall pay all premiums on these policies in full on or before their due dates. At the City's request, the Tenant shall provide it with certificates or other acceptable evidence of insurance evidencing its coverage, and at least thirty (30) days' prior Notice of any change in or cancellation of the insurance coverage.

24. **INSPECTION AND ACCESS.**

(a) The City shall have the right to enter the Leased Premises at any reasonable time, upon reasonable advance notice to Tenant, for the purpose of inspecting the same or to make such alterations, repairs or improvements as the City may deem necessary or desirable.

(b) The City shall have the right to enter the Leased Premises at any time, with or without notice to Tenant, in cases of emergency.

(c) The Leased Premises shall be subject to inspection by health, fire and building code officials at any time, with or without notice to Tenant.

25. **FORCE MAJEURE.** Neither party shall be obligated to perform hereunder and neither shall be in default if performance is prevented by fire, earthquake, flood, act of God, failure of utilities, riot, civil commotion or other occurrences of like nature, and law, ordinance, rule, regulation, or order of any public or military authority. Tenant shall not be deemed to be in default to the extent that its performance is prevented by strikes or labor disputes other than strikes and labor disputes between Tenant and its own employees and, provided further, that this provision shall not excuse performance where any alternate supply of products, labor or services is available.

26. **BANKRUPTCY OR INSOLVENCY.** In the event Tenant shall make any assignment for the benefit of creditors, or in the event Tenant's leasehold interest in the Leased Premises shall be subjected to execution or legal process, or in the event Tenant shall go into receivership, the City shall have the right to terminate this Lease immediately, irrespective of whether Tenant is in default of any of the terms of this Lease.

27. **BREACH OF LEASE.** In the event either party (a "Defaulting Party") shall breach any of the provisions of this Lease and such breach is not cured by the Defaulting Party within 30 days of delivery or mailing to it of written notice of breach, the other party (a "Non-Defaulting Party") shall have the right to terminate this Lease. Such termination shall be effective upon the mailing or delivery to the Defaulting Party of notice of termination. Termination of the Lease by Tenant as provided herein shall in no way relieve Tenant's obligation to pay any and all Rent and Commissions due and owing to the City under Paragraph 4 of this Lease or Tenant's obligations under Paragraph 20 of this Lease. In the event the City terminates this Lease upon default by Tenant, the City shall have the right to reenter and relet the Leased Premises and shall have the right to exercise any of its rights and remedies under applicable law.

28. **NOTIFICATION.** Any notifications required by this Lease shall be delivered in person to, or mailed, certified mail, to:

City of Hampton
22 Lincoln Street
Hampton, Virginia 23669
Attention: Kevin Myers

With Copy to:
City of Hampton
22 Lincoln Street
Hampton, Virginia
Attention: Nicole Fisher

Tenant:

Thomas McDermott, President
Mutzy, Inc.
1405 E. Pembroke Avenue
Hampton, Virginia, 23663

29. SURRENDER OF PREMISES.

(a) Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Leased Premises to the City in as good condition and repair as at the commencement of the term of this Lease, reasonable wear and tear excepted.

(b) Tenant's equipment and servicewares shall be removed from the Leased Premises within forty-eight (48) hours following the expiration of the term of this Lease or the sooner termination thereof.

30. NO LIABILITY. The City shall not be liable to Tenant or any other person for any damage or injury caused to any person or property irrespective of the cause thereof.

31. NO PARTNERSHIP OR JOINT VENTURE.

(a) It is understood and agreed by the parties hereto that they do not stand in the relationship of partners or joint venturers in connection with the operation of the restaurant establishment and concession services contemplated by this Lease. It is further understood and agreed by the parties that neither party shall be held responsible for the debts or obligations of the other.

(b) Tenant hereby acknowledges and agrees that its employees and agents are those of Tenant and not of the City and nothing in this Lease shall be deemed or construed to create or imply any employment or agency relation between the City and any of Tenant's employees or agents.

32. APPLICABLE LAW. This Lease shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretation, obligation, 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.

33. COMPLIANCE WITH ALL LAWS. Tenant shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted in the operation of the food services and in the performance of obligations herewith set forth. Tenant represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Lease prior to the opening for business to the public. Tenant further represents that it is a limited liability company in good standing in the Commonwealth of Virginia and will remain in good standing throughout

the term of the Lease. Tenant shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of Tenant's obligations herewith.

34. **VENUE.** Any and all suits for any claims or for any and every breach or dispute arising out of this Lease shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia or in the United States District Court for the Eastern District of Virginia, Newport News Division, if applicable.

35. **SEVERABILITY.** In the event any of the provisions of this Lease shall be declared invalid or unenforceable, the remainder of this Lease shall remain in full force and effect.

36. **NONDISCRIMINATION/DRUG-FREE WORKPLACE CLAUSE.**

(a) During the performance of this Lease, Tenant agrees as follows:

- (i) Tenant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Tenant. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (ii) Tenant, in all solicitations or advertisements for employees placed by or on behalf of Tenant, will state that such Tenant is an equal opportunity employer.
- (iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements herein.
- (iv) Tenant shall include the provisions of the foregoing subsections, (i), (ii), and (iii) in every subcontract or purchase order of over ten thousand dollars (\$10,000.00), pertaining to this Lease so that the provisions will be binding upon such subcontractor or vendor.

(b) During the performance of this Lease, Tenant agrees as follows:

- (i) Tenant will provide a drug-free workplace for Tenant's employees.
- (ii) Tenant will post in conspicuous places, available to all its employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Tenant's

workplace and specify the actions that will be taken against employees for violations of such prohibitions.

- (iii) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant that Tenant maintains a drug-free workplace.
- (iv) Tenant will include the provisions of the foregoing subsections (i), (ii), and (iii) in every subcontract or purchase order of over \$10,000, pertaining to this Lease, so that the provisions will be binding upon each subcontractor or vendor.

37. **BRANDING/USE OF NAME AND LOGO.** Tenant warrants and represents that it has the right to use any name, logo, or branding it utilizes in advertising, signage, menus, or any other media related to its use of the Leased Premises and that by doing so it is not violating any copyright or use rights of any third party. Tenant agrees to indemnify and hold harmless City against any and all claims related to Tenant's use of a brand, name, or logo in any type of media in breach of this section. Upon written demand by the City, Tenant shall assume and defend at Tenant's sole expense any and all such suits or defense of claims. This indemnification provision shall survive the expiration or termination of this Lease.

38. **MISCELLANEOUS.**

(a) This Lease, Exhibit A, and Exhibit B constitute the final, complete, and exclusive written expression of the intentions of the parties, and shall supersede all previous communications, representations, agreements, promises or statements, whether oral or written, by any party or between the parties.

(b) No modification of any of the terms and conditions of this Lease shall be effective unless contained in a writing signed by both parties.

(c) The headings used herein have been inserted for convenience only and do not constitute matters to be considered in interpreting this Lease.

(d) No waiver of any breach of any of the terms of this Lease shall be construed, taken or held to be a waiver of any other breach or waiver, acquiescence in or consent to any further or succeeding breach of the same term. To be effective, any such waiver must be in writing signed by the party whose right is waived and received by the party in breach.

(e) **THE CITY OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.**

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS the following signatures:

CITY OF HAMPTON

By: _____
City Manager

MUTZY, INC.

By: _____
Its: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2017

by _____, _____ (title) of Mutzy, Inc.

a Virginia corporation, on its behalf. He/She is known to me personally, or

has produced _____ as identification.

My commission expires: _____

Notary Public: _____

APPROVED AS TO CONTENT:

**APPROVED AS TO FORM &
LEGAL SUFFICIENCY:**

Dept. of Parks, Recreation, & Leisure
Services

Sr. Assistant City Attorney