

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) by and between the **CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia, (“City” or “Licensor”) and **DOWNTOWN HAMPTON DEVELOPMENT PARTNERSHIP, INC.**, a non-stock corporation organized and existing under the laws of the Commonwealth of Virginia (“DHDP” or “Licensee”), collectively the “Parties.”

RECITALS

- A. The City owns real property in the downtown area of Hampton, Virginia designated as LRSN 2002990, and commonly referred to as the “Carousel Park” Site (the “Property”).
- B. Licensee, a non-profit established in 1995, is a business association that promotes economic development, supports common business interests, and creates a positive image in the City’s Downtown Hampton Business Improvement District.
- C. Licensee desires to activate for use by Downtown Hampton residents, visitors, and employees certain portions of the Property, as further set forth on the site plan attached hereto as **EXHIBIT A** and incorporated herein (the “Licensed Areas”).
- D. Licensee desires to create a user-friendly experience and attraction for Downtown Hampton residents, visitors, and employees in the Licensed Areas, to include an urban beach area, a dog activity area, and storage (“Licensed Activities”).
- E. The City finds that Licensee’s use of the Property as set forth in this Agreement will enhance the quality of the experience of residents, visitors, and employees in Downtown Hampton, and that it is therefore in the interest of the citizens of Hampton to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the Parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals are incorporated herein and deemed part of this Agreement.
2. **Grant of License.** The City hereby grants a non-exclusive revocable license to Licensee, at no cost to Licensee, to enter upon and use the Licensed Areas for the Licensed Activities, subject to all other terms of this Agreement. The Licensed Areas are more particularly

shown on the attached **EXHIBIT A**. The location of the Dog Park Area, Urban Beach Area, and City-Provided Storage Shed, as those terms are further defined herein, shall be in substantial conformance with **EXHIBIT A**.

3. **Term.** The term of this Agreement shall commence at 12:01 a.m. on January 1, 2018 and shall continue for one (1) year ending at 12:00 p.m. December 31, 2018 (the “**Term**”), unless sooner terminated as provided in this Agreement. The Term includes the Licensed Activities and any required installation or set-up days and removal or clean-up days.

4. **Renewal.** Provided Licensee is in full compliance with this Agreement upon the end of the Term, Licensee shall have the right to four (4) one (1) year extensions of the term of this Agreement (each year a “**Renewal Term**”) upon mutual agreement of the City and subject to the right of the City to renegotiate the terms and conditions applicable during any Renewal Term. Licensee shall notify the City in writing of its intention to exercise its right to extend the Agreement at least 90 days prior to end date of the Term or any Renewal Term. In the event Licensee fails to give the required 90 days prior written notice, the City shall not be obligated to renew the Agreement.

The renewal provisions stated herein are conditioned and limited against both parties to the extent that the cumulative term of this Agreement plus all Renewal Terms shall not extend beyond five (5) full 12-month periods.

5. **Use of Licensed Areas and Licensee Responsibilities.**

a. Licensee, at Licensee’s sole cost and expense, shall obtain site plan approval pursuant to Chapter 35.1 of the City Code and all other required permits prior to commencing any improvements or alterations in, on, or to the Licensed Areas.

b. Licensee acknowledges that portions of the Property and Licensed Areas are subject to deed restrictions, which are enforced by the Commonwealth of Virginia under the Land and Water Conservation Fund Act, and which require “public outdoor recreation use” to be maintained in perpetuity on the Property. Accordingly, Licensee shall ensure that its use of the Licensed Areas does not preclude accessibility of same by the general public for public outdoor recreation use during the Carousel Hours as defined in this Agreement. The portions of the Property encumbered by the above-described deed restrictions are shown on the attached **EXHIBIT B**.

- c. Licensee shall be responsible and bear the costs of the following:
 - (i) Installation and maintenance of a dog activity area (the “Dog Activity Area”), which shall include: 4’ tall black wrought iron fencing around the entire dog activity area; dispensers for waste bags and continuing supply of bags or other like products for waste disposal; and waste pick-up and replenishment of waste bags, the frequency of which shall be no less than one (1) time daily. Licensee shall be responsible for removal of all pet waste from the ground of the Dog Activity Area to allow for City grass mowing.
 - (ii) Installation and maintenance of an urban beach area (the “Urban Beach Area”), which shall be constituted primarily of sand; and raked not less than one (1) time daily.
- d. Licensee shall be responsible and bear the costs of obtaining any permits and authorizations that may be required by federal, state, or local law, now in effect or hereafter adopted, for use of the Licensed Areas by Licensee as described herein, which shall include but not be limited to conformance with the City’s Special Events regulations in section 2-311 *et seq.* of the Hampton City Code. Licensee shall have one (1) or more employees present during the hours of all authorized special events organized by Licensee.
- e. Licensee is permitted, at its sole and absolute discretion, to place in the Licensed Areas furniture, equipment, games, or other tangible property (“Licensee-Provided Assets”). Licensee shall submit to the City’s Director of Parks, Recreation, and Leisure Services (“PRLS Director”) an itemized list of all Licensee-Provided Assets to be placed in the Licensed Areas no later than seven (7) calendar days before any such placement. In addition, Licensee shall thereafter amend that list to report any subsequent additions or removals of Licensee-Provided Assets within one (1) business day of each such addition or removal.

6. **City Responsibilities.** The City shall acquire, at its sole discretion, cost, and expense, for use by Licensee in the operation of the Licensed Areas, the following equipment and furnishings (collectively, the “City-Provided Assets”): ten (10) folding Adirondack chairs for use in the Urban Beach Area; and one (1) 12’x20’ storage shed (the “City-Provided Storage Shed”). The City shall further be responsible for and bear the cost of providing all utilities necessary for operation of activities at the Licensed Areas, excluding any additional utility access or service that may be necessary for Licensee-sponsored special events.

The City shall complete the responsibilities set forth in Paragraph 6 no later than 60 days after the first day of the commencement date of the Term of this Agreement.

Licensee acknowledges that the City, in its sole and absolute discretion, may place near, but not within, the Licensed Areas, to complement Licensee's use of the Licensed Areas, furniture and other assets, including, but not limited to, chairs, tables, umbrellas, and games.

7. **Shared Responsibilities; Maintenance, Storage, and Risk Management**. Licensors and Licensee shall be mutually responsible for maintenance of the Licensed Areas, storage of equipment, and security, as follows:

a. **Grass Mowing and Garbage Collection**. The City shall be responsible and bear the costs of its once-weekly grass mowing and three-times-weekly garbage collection schedule on the Property. Licensee shall be responsible at its own cost and expense for all other lawn maintenance and garbage removal necessary to maintain the Licensed Areas in a habitable condition. In addition, the City shall not at any time be responsible for (i) relocation of any furniture, equipment, or other assets to facilitate grass mowing; or (ii) removal of dog feces from or other maintenance of the Dog Activity Area or other portions of the Licensed Areas.

b. **Daily Furniture and Equipment Storage**. City-Provided Assets and Licensee-Provided Assets shall be stored daily in the City-Provided Storage Shed. In the event the Licensee desires the City-Provided Assets and the Licensee-Provided Assets to be available at times other than during the Carousel Hours, Licensee shall be solely responsible for the placing and storing said items. For this purpose, Licensee shall contact, via email, the Executive Director of the Hampton History Museum, Luci Cochran, at lcochran@hampton.gov and Sunny Demming, Special Events Coordinator, at sunny.demming@hampton.gov at least 24 hours in advance so as to avoid conflicts with City events. In addition, Licensee shall fill out the Carousel Park Equipment Log, attached hereto as **EXHIBIT C**, which shall be kept inside the City-Provided Storage Shed.

c. **Access to the City-Provided Storage Shed**. Licensors shall provide Licensee two (2) keys for the purpose of accessing and securing the City-Provided Storage Shed. Licensee agrees to not reproduce any such keys, to promptly report the loss of any such keys, and to return all such keys upon the termination of this Agreement.

d. **Inspection, Repair & Replacement of Assets**. All City-Provided Assets and Licensee-Provided Assets shall be inspected each day they are used by Licensee's staff

and City staff, as applicable, to assess any damage and identify and remove any assets determined to be in need of repair or replacement. The City shall be solely responsible for the final determination of the repair, replacement, and disposition of all City-Provided Assets. Licensee shall be solely responsible for the repair, replacement, and disposition of all Licensee-Provided Assets.

e. **Risk Management.** Licensee shall provide for or perform regular inspections of the Licensed Areas and its facilities for cleanliness, safety and need for repair daily, which shall be in addition to routine inspections conducted by the City Parks, Recreation and Leisure Services (“PRLS”) playground inspector. Licensee shall create a system of documentation for the results of those daily inspections. In addition, Licensee shall:

- i. Develop standard operating procedures for emergencies, including procedures for documenting and responding to accidents, injuries and other incidents, which shall be provided to the City in writing prior to Licensee’s entry onto the Licensed Areas.
- ii. Train Licensee personnel in taking accident reports and responding to injuries.
- iii. Report any accidents or injuries of which Licensee, its employees, officers, or agents are made aware of to PRLS and the Hampton Department of Risk Management within 24 hours of occurrence, except for injuries requiring transport to an emergency facility which shall be reported immediately.

8. **Inclement weather.** The City has the right limit or prohibit access to the Licensed Areas and require storage of equipment and furniture, 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 limitation or prohibition to access.

9. **Non-exclusive Use.** Licensee shall have all rights and privileges to conduct all activities authorized under the terms of this Agreement, provided, however, that this Agreement shall not be construed in any manner to grant Licensee or those claiming under Licensee the exclusive right to use the Licensed Areas. In addition, the City reserves the right to conduct

and/or authorize others to conduct events in the Licensed Areas, upon written notice to Licensee; and Licensee agrees to cooperate with the City as necessary to facilitate any such events.

10. **Non-discrimination** Licensee agrees that the Licensed Areas, including but not limited to the Dog Activity Area, Urban Beach Area, shall be available to the general public, and that Licensee shall not deny access or use of the Licensed Areas in any manner that violates any law or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

11. **Revocation and Termination.** The City or Licensee may terminate this Agreement for any reason, in writing with thirty (30) days' notice, to the other Party. In addition, the City may terminate this Agreement immediately in the event Licensee fails to perform any responsibilities, as stated herein. At revocation or termination of this Agreement, and upon written request from the City, Licensee shall have sixty (60) days to return the Licensed Areas to their original condition, with normal wear and tear excepted, which shall include, but not be limited to removal and resodding of the Dog Activity Area and Urban Beach Area as those areas are described above in Paragraph 5. Notwithstanding the foregoing, if the Agreement is terminated outside of September through March (the "Planting Season"), then any required resodding and planting work in the Licensed Areas shall be delayed until the next Planting Season. In such a case, Licensee shall coordinate with the City to determine a mutually agreeable schedule for resodding and planting during the next Planting Season.

12. **Indemnification.** Licensee will be responsible for all actions of its volunteers, employees, agents and representatives and expressly agrees to indemnify and save harmless the City, its agents, employees and officials from and against any and all claims, loss, damage, injury and liability however caused, in connection with the Agreement during the Term and any Renewal Terms of this Agreement and the negligent and willful acts and omissions of Licensee's volunteers, employees, agents, contractors, vendors, and representatives and those for whom Licensee is legally liable, and all losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees and other costs of defending against such claims, suits, actions and proceedings), unless such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from the sole gross negligence of the City, its agents, employees, and officials. Licensee shall assume on behalf of the City, and all entities claiming by, through or under the City, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against the City or any entity claiming by, through or under the City, whether or not Licensee is joined therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent. Licensee shall bear the costs of all judgments and settlements in connection therewith; provided. Maintenance of the insurance referred to in this Agreement shall not affect the obligations of Licensee under this Agreement, and the limits of

such insurance shall not constitute a limit on the liability of Licensee under this Paragraph.

In connection with Licensee's use of the Licensed Areas, any costs associated with violations of the law including, but not limited to, remediation, clean-up costs, fines, administrative, criminal or civil penalties or charges, and third party claims imposed on the City 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 Licensee or by volunteers, vendors, employee, agents and representatives shall be paid by Licensee.

The provisions of this paragraph shall survive the termination or expiration of this Agreement.

13. **Insurance.** Licensee shall secure and maintain in full force and effect at all times during the period this Agreement is in effect Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages in an amount not less than One Million and No/100 Dollars (\$1,000,000) per occurrence and an aggregate limit of not less than Two Million Dollars (\$2,000,000.00). Additionally, excess or umbrella coverage must be maintained in the amount of not less than Two Million Dollars (\$2,000,000.00).

Prior to the commencement of this Agreement, Licensee must provide to the City's Risk Management Administrator all required certificates of insurance issued by an insurance company licensed to conduct the business of insurance in the Commonwealth of Virginia. The certificates of insurance shall list the City as additional insured in the endorsement box for general liability and the excess/umbrella liabilities policies. Failure to produce the required certificates of insurance and the above-referenced endorsements to the policy will constitute a breach of this Agreement which may result in the immediate termination of this Agreement and the revocation of the underlying license granted.

14. **Applicable Law.** This Agreement 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 Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Any and all suits for any claims or 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, Virginia.

15. **Notice.** A notice, communication, or request under this Agreement by the City to Licensee or by Licensee to the City shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested or (b) 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: Mary Bunting, City Manager
Eighth Floor, City Hall
22 Lincoln Street
Hampton, VA 23669

Copy to: Vanessa T. Valldejuli, City Attorney
Eighth Floor, City Hall
22 Lincoln Street
Hampton, VA 23669

As to Licensee: James Cerrachio, Director
Downtown Hampton Development Partnership, Inc.
710 Settlers Landing Road
Hampton, VA 23669

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 or (b) 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.

16. **Assignment.** Licensee shall not assign its rights and duties under this Agreement without the prior written consent of Licensor.

17. **Modification.** This Agreement represents the entire and integrated agreement between the City and the Licensee and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be modified, except in a writing, executed by the authorized representatives of the City and Licensee.

18. **Authorized Signatures.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized

and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

19. **Effective Date.** The effective date of this Agreement shall be the date on which the City Manager or her designee signs the Agreement.

WITNESS the following signatures:

CITY OF HAMPTON, VIRGINIA

By: _____
Mary Bunting, City Manager

APPROVED AS TO FORM &
LEGAL SUFFICIENCY:

Bonnie N. Brown
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Alison Eubank,
Placemaking Planner

DOWNTOWN HAMPTON DEVELOPMENT
PARTNERSHIP, INC.

By: _____
Carlyle Bland, President