

LEASE FOR PORTION OF 710 SETTLERS LANDING ROAD

THIS LEASE AGREEMENT (this "Lease") is made between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("Landlord") and **DOWNTOWN HAMPTON DEVELOPMENT PARTNERSHIP, INC.**, a Virginia non-stock corporation, having a current principal place of business at 710 Settlers Landing Road, Hampton Virginia, 23669 ("Tenant");

WITNESSETH:

That for and in consideration of the terms, conditions, covenants, promises and agreements herein made, the parties to this Lease hereby agree as follows:

1. Leased Premises. Landlord is the owner of that certain property and improvements located at 710 Settlers Landing Road (LRSN: 2003230; the "Property"). Landlord leases and demises to Tenant and Tenant takes and leases from Landlord, a portion of the Property consisting of approximately 2,144 rentable square feet comprising the second floor of the building known as the "Hampton Maritime Center," (the "Building") as shown on Exhibit A attached hereto and made a part hereof (the "Leased Premises"). Tenant accepts the Leased Premises "AS IS, WHERE IS."

2. Term.

(a) The term of this Lease shall be for a period of five (5) years, commencing on the 1st day of December, 2019 (the "Commencement Date") and ending at midnight on the 30th day of November, 2024 (the "Term"). Tenant may request a new lease at the expiration of the Term, however, such request must be considered and approved by Council pursuant to and in accordance with Code of Virginia §§15.2-1800 and 2100.

(b) If Tenant shall continue to occupy the Leased Premises after the termination or expiration of the Term of this Lease (including a termination by notice under the terms of this Lease), any holding over by Tenant after expiration of the Term shall constitute a tenancy from

month to month. Rent for any month of said holding over shall be at a rate equal to one and one-half (1 ½) times the monthly rent payable for the last month of the Term. Notwithstanding the foregoing, if Tenant shall hold over after the expiration or termination of this Lease, and Landlord shall desire to regain possession of the Leased Premises, then Landlord may re-enter and take possession of the Leased Premises without process, or by any legal process in force in the Commonwealth of Virginia. Tenant shall indemnify Landlord against all liabilities and damages sustained by Landlord by reason of Tenant's retention of possession.

3. Rent. Tenant shall pay rent for the Leased Premises in the sum of \$12,800.00 per year (the "Rent"), payable in equal monthly installments of \$1,066.66, in advance, without demand therefor, and on the first (1st) day of each and every calendar month during the Term of this Lease. Notwithstanding that due date, Rent payable for the calendar month beginning December 1, 2019 shall be due upon the execution of the Lease by the Tenant and the Landlord.

The Rent and any other sums payable by Tenant to Landlord shall be paid at such address as Landlord may direct, or if none specified, to the address for delivering notices in Paragraph 18.

If Tenant fails to pay any installment of Rent as required herein within ten (10) days after the same becomes due, Tenant shall pay Landlord a late charge of five percent (5%) of the overdue amount. This provision shall not be construed to adjust, alter, or modify any due date hereunder, nor shall the payment of any late charge required by this Paragraph 3 be deemed to cure or excuse any default by Tenant under this Lease.

4. Permitted Use. The Leased Premises shall be used for Tenant's offices and all uses consistent therewith, and for no other purpose without the prior written consent of Landlord,

which shall not be unreasonably withheld. The Leased Premises shall not be used in such a manner as to constitute a public or private nuisance.

Landlord additionally grants to Tenant, during the Term of this Lease, the right to use, in common with Landlord and other tenants and occupants of the Building, (a) all portions of the Building (if any) designed for the common use of all Tenants and occupants of the Building, (b) all utility lines, pipes, conduits and other similar facilities existing on the Property necessary for the use of the Leased Premises, and (c) the City common areas on the second floor subject to the City's use for City activities. Tenant's use of these common facilities shall be subject to such reasonable rules and regulations as Landlord may adopt.

5. Utilities and Services. Landlord shall provide, at Landlord's expense, all electricity, gas, water, heating and air conditioning, janitorial services, window cleaning, sewer, stormwater utility fees, trash collection, solid waste collection costs and fees and common area upkeep, except for the all restrooms (public and boaters) which are the responsibility of Tenant under that certain agreement between the Landlord and Tenant for certain marina services dated January 18, 2017. Tenant shall be solely responsible for and promptly pay all charges for telephone service and any other utilities used or consumed by Tenant which are not expressly the responsibility of Landlord.

6. Alterations. Tenant shall make no modifications, alterations, or improvements to the Leased Premises without Landlord's prior written consent. Any approved modifications, alterations or improvements shall be performed only by a duly licensed contractor and upon plans satisfactory to Landlord in its sole discretion, at Tenant's expense. Upon the termination of this Lease, any such modifications, alterations, or improvements shall become the property of Landlord, or if Landlord requests, the same shall be removed, without damage to the Leased

Premises and Tenant shall restore the Leased Premises to as near its original condition as possible, excepting normal wear and tear.

7. Maintenance. Tenant shall maintain the interior of the Leased Premises, at Tenant's expense. Tenant shall repair, replace or restore all damage to the Leased Premises caused by the willful or negligent acts or omissions of Tenant or its agents, contractors, subcontractors, employees, or invitees, or by a breach by Tenant of its obligations under this Lease, except to the extent liability is waived under Paragraph 11.

Landlord covenants to keep, repair, and maintain, at Landlord's expense, the roof and all structural elements of the Building including structural walls, floors, and foundations and any common utility lines, pipes, conduits, equipment and systems that serve more than one tenant of the Building. Landlord's obligations are subject to ordinary wear and tear. Further, Landlord shall be entitled to full reimbursement to the extent Tenant is responsible for any damage to the Leased Premises, the Building, or the Property caused by the willful or negligent acts or omissions of Tenant or its agents, contractors, subcontractors, employees or invitees.

8. Landlord Representative/Access. For purposes of this Lease, Landlord's representative shall be the Executive Director of Convention & Visitor Bureau ("Director") and any and all daily contact information or questions shall be referred to the Director.

Making reasonable efforts not to disrupt Tenant's business, Landlord shall have the right at any time, without prior notice, to enter upon the Leased Premises (a) to service and make repairs, alterations or improvements to the Leased Premises, (b) to verify Tenant's compliance with the terms of this Lease, and (c) to exhibit the Leased Premises to prospective tenants or for any public purpose. In the case of showing the Leased Premises to prospective tenants, such exhibition shall be made only during the last six (6) months of this Lease.

9. Assignment and Sublease. Tenant shall not assign this Lease in whole or in part or sublease all or any part of the Leased Premises without Landlord's prior written consent. 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 Leased 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.

10. Insurance. Tenant agrees to maintain in full force and effect during the entire Term of this Lease, Commercial General Liability Insurance with an A-rated insurance company, including contractual liability coverage in an amount not less than \$1,000,000 per occurrence with aggregate excess liability coverage of not less than \$2,000,000. Such insurance shall name Landlord as an additional insured. Tenant shall provide proof of insurance to Landlord upon execution of the Lease by all parties.

The policy of insurance required herein shall be written by an insurance company licensed to conduct the business of insurance in Virginia, and acceptable to Landlord, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty (30) days prior written notice to Landlord.

11. Waiver of Subrogation. Landlord and Tenant agree on behalf of themselves and all others claiming under them, including any insurer, to waive all claims against each other, including rights of subrogation, for loss or damage to their respective property arising from fire and any of the perils normally insured against in an extended coverage insurance policy, including vandalism and malicious mischief endorsements. If either party so requests, the other

party shall obtain from its insurer a written waiver of all rights of subrogation that it may have against the other party.

12. Indemnification and Hold Harmless. Except to the extent liability has been expressly waived under Paragraph 11, Tenant unconditionally agrees to indemnify and hold harmless Landlord, its employees, agents, volunteers, and officials against all causes of action, costs, expenses, liabilities, losses, damages, fines, penalties, claims, suits, demands, reasonable attorney's fees, expenses of litigation, expert witness fees, investigations, judgments, administrative proceedings, and other incidental expenses (collectively "Claims"), resulting from injury or death of any person or damage to property occurring on or about the Leased Premises or arising in conjunction with the use and occupancy of the Leased Premises by Tenant or others claiming under Tenant, unless the death, injury or damage was sustained as a result of the negligence or willful misconduct of Landlord. Tenant's indemnity includes, but is not limited to, any Claims resulting from the accumulation, storage, or release of hazardous or toxic substances or materials, hazardous wastes or other contaminants or any adverse environmental condition which is deemed hazardous to the health or safety of persons entering or occupying the Leased Premises or other violations of applicable environmental laws occurring during the Term. This hold harmless and indemnity provision shall survive and remain in effect notwithstanding any termination, cancellation, or expiration of this Lease or Tenant's tenancy.

13. Damage or Destruction of Leased Premises. If the Leased Premises are damaged by fire or other casualty so as to render same untenable in whole or in substantial part, Landlord may elect to terminate this Lease effective as of the date of such casualty. In addition, if the Building or Property is destroyed in whole or in substantial part by fire or other casualty (regardless of the extent of damage to the Leased Premises), or such damage occurs during the

last year of the term of this Lease, 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 pay Rent apportioned to the date of such casualty and shall immediately surrender the Leased Premises to Landlord who may enter upon and repossess the same and Tenant shall be relieved from further liability.

If this Lease is not so terminated by Landlord, either because the damage does not render the Leased Premises untenable, either in whole or in substantial part, or because Landlord does not elect to terminate this Lease pursuant to the preceding provision, then subject to "Excusable Delay" as defined herein, Landlord shall use reasonable diligence to commence the repair or restoration, and shall thereafter diligently continue the same to as to repair and restore the Leased Premises to substantially its original condition (notwithstanding any alterations or improvements made by Tenant). In this event, Rent shall be abated in proportion to the untenable space until the Leased Premises are restored. For purposes of this Paragraph, a "substantial part" shall be deemed to mean more than 50% of the usable floor area of the Leased Premises. The term "Excusable Delay" shall mean any one or more of the following: labor disputes, fire, damage or other casualty, unusual delay in transportation, adverse weather conditions, unavailability of labor, materials and equipment, and any other causes beyond Landlord's reasonable control. Tenant, at its own expense, shall promptly replace and/or restore to their prior conditions any alterations of the leasehold improvements made in the Leased Premises by Tenant pursuant to Section 6. All insurance proceeds arising from such damage or destruction shall be made available to Landlord.

If the damage by any of the above casualties is so slight that Tenant is not disturbed in its possession and enjoyment of the Leased Premises, then Tenant shall repair the same promptly and in that case the Rent accrued or accruing shall not abate.

Notwithstanding the foregoing, nothing in this Lease shall be construed or deemed to require Landlord to repair or reconstruct the Leased Premises or the Building.

14. Default(s). In the event of any failure of Tenant to timely and fully comply with any term of this Lease Tenant shall be in default. If such default shall continue for more than thirty (30) days after written notice thereof shall have been mailed to Tenant, Landlord shall have all rights and remedies available at law and shall be entitled to reasonable attorney's fees, costs and expenses plus interest incurred in the enforcement of any such terms.

In the event that Rent is not paid when due, and such failure is not cured within thirty (30) days thereof, Landlord may, with written notice to Tenant, terminate Tenant's right to possession of the Leased Premises by any lawful means, reenter the Leased Premises, recover possession, and this Lease shall then terminate. Lessee shall immediately surrender possession of the Leased Premises to Landlord. Landlord shall have all rights and remedies as permitted by law and shall be entitled to reasonable attorney's fees, costs and expenses plus interest on said costs incurred in enforcing this provision.

15. Liability for Damage. Landlord shall not be liable for any damage to any property of Tenant or others, or injury to persons within the Leased Premises, resulting from (i) the electrical, heating, plumbing, sewer, or other mechanical systems of the Leased Premises, (ii) water, snow, or ice being upon or coming through the roof, walls, floors windows or doors of the Leased Premises, (iii) the acts of negligence of co-tenants or other occupants of the Building, or (iv) any fire or other casualty whatsoever. Landlord shall not be liable for failure to keep the

Leased Premises or the Building in repair, unless Landlord is expressly obligate to make the repairs under the terms of this Lease and unless notice of the need for the repairs has been given to Landlord by Tenant and Landlord has failed to make the repairs within a reasonable time after receipt of notice.

16. Special Right to Terminate. The parties acknowledge that Landlord has certain powers, purposes, and responsibilities by virtue of being a municipality. To discharge its powers, purposes, and responsibilities, Landlord shall have the right to terminate this Lease by giving written notice to Tenant sixty (60) days in advance, in the event that the termination hereof is necessary for any public purpose, upon action by City Council. Any Rent paid in advance by Tenant shall be returned by Landlord in an amount prorated according to the actual period of occupancy. It is agreed that the power of Landlord to terminate or interrupt Tenant's use of the Leased Premises shall not be arbitrarily or capriciously exercised.

17. Taxes. Tenant shall be responsible for and shall stay current in the payment of taxes assessed to the Leased Premises Code of Virginia §58.1-3203, and all other taxes imposed on the property or activities of by Landlord or any other governmental agency throughout the Term.

18. Notice. Any notice required or permitted by this Lease to be given by either party to the other must be in writing unless otherwise provided herein and shall be effective only if (i) delivered by personal service, (ii) delivered by Federal Express or another comparable overnight express delivery service, with all charges prepaid, or (iii) mailed by registered or certified mail, postage prepaid, return receipt requested. In each case, the notice should be addressed to the addresses set forth below, or at such other addresses as either party may designate by notice given from time to time. Notice shall be deemed given (a) on the day

received if by personal service, (b) one business day after deposit with the courier service with delivery fee prepaid, or (c) on the second business day after being placed in the United States mail as aforesaid.

A. Landlord's address for notices shall be:
City Manager's Office
22 Lincoln Street
Hampton, Virginia 23669
Attention: Brian DeProfio

With copy to:
Convention & Visitor Bureau
1919 Commerce Drive, Suite 290
Hampton, Virginia 23666
Attention: Executive Director

B. Tenant's address for notices shall be:
Downtown Hampton Development Partnership
710 Settlers Landing Road
Hampton, Virginia, 23369
Attention: Stephen M. Mallon

19. Waiver. 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.

20. Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Leased Premises in good condition and repair, excepting ordinary wear and tear, fire and other casualty (provided such fire, damage or other casualty is not with respect

to property to be insured by Tenant and is not covered by Tenant's indemnity in Paragraph 12 herein.)

21. Compliance With All Laws/Governing, Law /Venue. Tenant shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of its obligations under this Lease. Lessee represents that it possesses all necessary licenses and permits required to conduct its business.

This Lease shall be construed to be a Virginia contract and shall be governed by the applicable laws of the Commonwealth of Virginia as to all matters, whether of validity, interpretation, obligations, performance or otherwise.

Venue for any suit brought to enforce the terms of this Lease or arising from the rights, liabilities or obligations set forth herein shall be filed in the appropriate court of competent jurisdiction in the City of Hampton.

22. 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.

23. 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.

24. 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.

25. Nondiscrimination. Employment discrimination by Tenant shall be prohibited. during the Term, and Tenant agrees as follows:

a. Tenant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, 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.

b. Tenant, in all solicitations or advertisements for employees placed by or on behalf of Tenant, will state that Tenant is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this paragraph.

26. Drug-Free Workplace. During the Term, Tenant agrees as follows:

a. Tenant will maintain the Leased Premises in a drug-free manner.

b. Tenant will post in conspicuous places, available to 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 on the Leased Premises and specifying the actions that will be taken against employees for violations of such prohibition.

27. Accessibility by the Handicapped. Tenant acknowledges that the Leased Premises does not comply with the minimum requirements of the Americans with Disabilities Act of 1990, as amended, (the "ADA") and Tenant shall make accommodations for the public at its sole expense.

28. Covenant against Liens. If, because of any act or omission of Tenant, or others claiming by or through Tenant, any mechanic's liens or any other lien, charge, or order for the payment of money shall be filed against Landlord or any portion of the Leased Premises, Tenant

shall, at its own cost and expense, cause the same to be paid, discharged of record or bonded off within thirty (30) days after written notice from Landlord.

29. Signs. Tenant will not place any signs or other advertising matter or material on the exterior of the Leased Premises, the Building, , in the windows of the Building, or on the grounds, parking lot, or common areas of the Property, without prior written permission of the Landlord, which shall not to be unreasonably withheld. Notwithstanding the above, Tenant may place a sign on the face of the Leased Premises announcing its agency name and purpose, the use and installation of which shall be subject to all applicable laws of City of Hampton, Virginia related to such signage.

30. 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 Leased 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.

31. Force Majeure. In the event that Landlord shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strike, lockout, labor trouble, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, act, failure to act or default of the other party, war or other reason beyond Landlord's control, performance of such act shall be excluded for such period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay. In such case Rent shall be abated for any period (measured pro rata) that the Leased Premises is uninhabitable due to such force majeure condition.

32. Entire Agreement. This Lease together with Exhibit A, constitutes the entire, full and complete understanding and agreement of the parties, and may not be modified orally or in any other manner than by agreement in writing signed by the parties to this Lease, or their respective successors in interest.

IN WITNESS WHEREOF, the parties hereto have affixed their seals as of the day and year first above written.

CITY OF HAMPTON

By: _____
City Manager or Her Designee

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, City Manager/Authorized Designee of the City Manager, on behalf of the City of Hampton, Virginia. She is personally known to me.

Notary Public

My commission expires: _____
Notary Registration #: _____

Approved as to content:

Convention & Visitor Bureau

Approved as to form & legal sufficiency:

Sr. Deputy City Attorney

[Signatures continue on the following page.]

DOWNTOWN HAMPTON DEVELOPMENT
PARTNERSHIP, INC.

By: _____
Name: Stephen M. Mallon
Title: Executive Director

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to wit:

The foregoing instrument was acknowledged before me this _____ day of December, 2019, by Stephen M. Mallon, Executive Director of the Downtown Hampton Development Partnership, on its behalf. He is personally known to me or has produced _____ as identification.

Notary Public

My commission expires: _____
Notary Registration #: _____

(End of Signatures.)