

**LEASE AGREEMENT**

This **LEASE AGREEMENT** (the "Agreement") is between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the "Landlord" or the "City"), and **SWINGERS GOLF CLUB, LLC**, a limited liability company organized in the Commonwealth of Virginia (the "Tenant"), with its principal office located at 4904 Westmoreland Drive, Williamsburg, Virginia 23188, (the City and the Tenant collectively referred to as the "Parties").

**WITNESSETH:**

In consideration of the terms, conditions, covenants, promises, and agreements herein made, the Parties agree as follows:

1. **Leased Premises:** The City shall lease and the Tenant shall rent a portion of the property located at 100 Seldendale Drive, Hampton, Virginia, as identified in the City's land records as LRSN 8000005, and as further shown on Exhibit A, which is attached hereto and incorporated herein (the "Leased Premises"). The Tenant accepts the Leased Premises "as is" and the City shall not be responsible for any repairs, improvements, or maintenance thereof.
2. **Term:** The term of this Agreement shall be for a period of five (5) years commencing on February 1, 2024 at 12:00 a.m. EST and ending January 31, 2029 at 11:59 p.m. EST (the "Term").
3. **Permitted Use:** The Leased Premises shall be used as a golf driving range and for purposes related, such as, but not limited to, rent and/or sale of golf equipment and golf lessons. The Tenant agrees not to use the Leased Premises for any purposes other than as specifically mentioned herein, and the Tenant agrees not to use the Leased Premises for any unlawful purpose.
4. **Rent:** The base rent for the Leased Premises shall be as follows:

<i>First Year</i>	<i>\$10,812.00 per year; payable in equal monthly installments of \$901.00</i>
<i>Second Year</i>	<i>\$10,812.00 per year; payable in equal monthly installments of \$901.00</i>
<i>Third Year</i>	<i>\$11,352.60 per year; payable in equal monthly installments of \$946.05</i>
<i>Fourth Year</i>	<i>\$11,920.20 per year; payable in equal monthly installments of \$993.35</i>
<i>Fifth Year</i>	<i>\$12,516.24 per year; payable in equal monthly installments of \$1,043.02</i>

The Tenant shall pay such Rent, in advance, without demand therefor, and on the first day of each and every calendar month during the Term of this Agreement.

The Rent and any other sums payable by the Tenant to the City shall be paid at such address as the City may direct, or if none is specified, to the address for delivering notices in Paragraph 14.

If the Tenant fails to pay any installment of the Rent within ten (10) days after the same becomes due, the Tenant shall pay the City 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 be deemed to cure or excuse any default by the Tenant under this Agreement.

5. **Taxes and Fees:** The Tenant shall pay such real estate taxes as required by law and all utilities, stormwater fees, and other fees and assessments which are applicable to the Leased Premises. Failure to timely pay such taxes, fees, or assessments shall be grounds for termination of this Agreement.
6. **Insurance:** The Tenant shall submit to the City certificates of insurance with applicable endorsements to the policy attached, prior to the commencement of the term of this Agreement. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified by the Tenant without thirty (30) days prior written notice to the City.

The certificate of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669 as additional insured. The Endorsement shall be either a direct Endorsement that actually names the City or a blanket Endorsement within the insurance policy that states that under a contractual agreement the City will be named as an additional insured on the required insurance policy. Such insurance shall also contain an endorsement stating that the insurance is primary with respect to any self-insurance or insurance maintained by the City of Hampton.

Insurance shall be maintained during the entire term of the Agreement and shall be of the following forms and limits:

All required insurance coverages must be obtained from insurers authorized to do business in the Commonwealth of Virginia. The insurers must have a rating of "A" (financial strength) and a VII or greater in the latest edition of the A.M.'s Best Company's Insurance reports.	
<b>Coverage Parts Required</b>	<b>Coverage Limits</b>
<b>Commercial General Liability (CGL)</b> Required but not limited to: Bodily Injury and Property Damage Personal & Advertising Injury Damage to Rented Premises Premises liability Products & Completed Operations Contractual Liability	\$1,000,000 per occurrence \$3,000,000 aggregate \$100,000 min on damage to rented premises
<b>Workers' Compensation</b> <b>Employer's Liability</b>	Per Virginia Statute (Waiver Provided)
<b>Waiver of Subrogation</b> All lines of liability	Required Waiver of Subrogation
Coverage is primary. Claims-made policies require the policy holder to provide evidence of a retroactive date on the policy no later than the beginning of the start of the contract. Claims-made commercial general liability must provide an endorsement extending the claim reporting period of up to three (3) years after the agreement.	
Certificates of Insurance (COI's) must be accompanied by an endorsement naming City of Hampton and their elected and appointed officials, agents, employees and volunteers as additional insureds.	

7. **Indemnification and Immunities:** The Tenant unconditionally agrees to release and to indemnify and hold harmless the City, its employees, agents, volunteers, and officials against any and 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 called "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 the Tenant or others claiming under the Tenant, unless the death, injury, or damage was sustained as a result of the gross negligence or willful misconduct of the City.

The Tenant's release and indemnity includes, but is not limited to, any claims as defined in this Agreement or claims arising from materials, hazardous wastes, or other contaminants or any adverse environmental condition resulting from the accumulation, storage, or release of hazardous or toxic substances 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 release, hold harmless, and indemnity provision shall survive and remain in effect notwithstanding any termination, cancellation, or expiration of this Agreement or the Tenant's tenancy.

8. **Assignment and Sublease:** The Tenant shall not assign its right and duties under this Agreement in whole or in part or sublease all or any part of the Leased Premises without the prior written consent of the City. Any such assignment or sublease without the City's written consent shall be void, and shall, at the option of the City, terminate this Agreement. No assignment of this Agreement or subletting of the Leased Premises, with or without the City's written consent, shall be deemed to release the Tenant from any of its obligations under this Agreement, nor shall any assignment or subletting be construed as permitting any further assignment or subletting except in accordance with this Paragraph 8.
9. **Access:** The Tenant shall allow the City, or its authorized agents, to enter the Leased Premises for purposes of inspection or as otherwise required by the City.
10. **Landscaping and Improvements:** The Tenant agrees to landscape the Leased Premises and keep all of the improvement in good repair and appearance.
11. **Premises Untenable:** In the event that a structural deficiency develops, or the Leased Premises become untenable by reason of environmental problems, condemnation, fire, or other cause not within the control of the Tenant, the Tenant shall vacate the Leased Premises; and the Rent shall terminate upon the day that such vacation occurs. Any prepaid Rent shall be refunded by the City and the Tenant shall have no legal or equitable claim for damages against the City. The Tenant hereby released the City from any liability whatsoever and covenant not to file any suit or claim therefor.
12. **Default(s):** In the event of any failure of the Tenant to timely and fully comply with any terms of this Agreement, the 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 the Tenant, the City 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. However, if the default involves the failure to pay Rent or other sums payable herein as and when due, and such failure is not cured within thirty (30) days thereof, the City may, with written notice to the Tenant, terminate the Tenant's right to possession of the Leased Premises by any lawful means, reenter the Leased Premises, recover possession, and this Agreement shall then terminate. The Tenant shall immediately surrender possession of the Leased Premises to the City. The City 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 any costs incurred in enforcing this Paragraph 12.

13. **Termination:** In addition to termination as a result of default under Paragraph 12 of this Agreement, the Parties acknowledge that the City may terminate this Agreement for any reason upon 90 days' written notice to the Tenant. In order for the Tenant to remove its property from the Leased Premises pursuant to Paragraph 22, the Tenant may request, in writing, an option to extend for up to an additional 90 days. The City's approval of such request shall not be unreasonably withheld, so long as the Tenant has made reasonable progress toward the removal of its property from the Leased Premises within the initial 90 days following the City's written notice of termination. Any Rent paid in advance by the Tenant shall be returned by the City in an amount prorated according to the actual period of occupancy. It is agreed that the power of the City to terminate or interrupt the Tenant's use of the Leased Premises shall not be arbitrarily or capriciously exercised.
14. **Notice:** A notice, communication, or request under this Agreement by the City to the Tenant or by the Tenant to the City shall be sufficiently given or delivered if sent 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 set forth below.

As to the City:           City of Hampton  
Department of Parks, Recreation & Leisure Services  
22 Lincoln Street  
Hampton, VA 23669  
Attn: Director, Dave McCauley

Copy to:                 City of Hampton  
City Attorney's Office  
22 Lincoln Street  
Hampton, VA 23669  
Attn: Angela King

As to the Tenant:       Swingers Golf Club, LLC  
4904 Westmoreland Drive  
Williamsburg, Virginia 23188  
Attn: James Correll Thompson

Copy to:                 Lawrence G. Cumming, Esq.  
11815 Fountain Way, Suite 400  
Newport News, VA 23606

15. **Waiver:** No waiver by the City or the Tenant at any time, express or implied, of any breach of any term of this Agreement shall be deemed a waiver of a breach of any other term of this Agreement or a consent to any subsequent breach of the same or any other term. No acceptance by the City of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on the account. The City may accept Rent, or other sum payable or other benefits pursuant to this Agreement and acceptance of the same shall not be deemed a waiver of any prior default.

16. **Compliance with all Laws:** The 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 Agreement.
17. **Applicable Law:** This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters exclusively by the laws of the Commonwealth of Virginia. All suits for any claims or for any breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia.
18. **Covenant Against Liens:** If, because of any act or omission of the Tenant, or others claiming by or through the Tenant, any mechanic's lien or any other lien, charge, or order for the payment of money shall be filed against the City or any portion of the Leased Premises, the 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 the City to the Tenant of the filing thereof.
19. **Severability:** If any section, paragraph, subparagraph, sentence, clause, or phrase of this Agreement shall be declared or judged invalid or unconstitutional, such adjudication shall not affect the other sections, paragraphs, subparagraphs, sentences, clauses, or phrases of this Agreement.
20. **Successors and Assigns:** The terms, conditions, covenants, and agreements in this Agreement to be kept and performed by the City and the Tenant shall bind and inure to the benefit of their respective heirs, personal representatives, successors, and approved assigns.
21. **Entire Agreement:** This Agreement, together with any and all exhibits attached hereto, constitutes the entire agreement between the Parties and may be modified only by a writing signed by both Parties.
22. **Tenant's Property:** The Tenant installed and is the owner of certain building and improvements situated on the Leased Premises. Should the Tenant vacate the Leased Premises, for any reason, the Tenant has the right to remove at its expense all equipment, machines, buildings, business fixtures, and personal property which have been placed or installed on the Leased Premises by the Tenant and shall deliver the Leased Premises to the City. Any damage to the Leased Premises resulting from the removal of such items shall be promptly repaired by the Tenant at its sole expense.
23. **Alterations:** The Tenant shall make no modifications, alterations, or improvements to the Leased Premises without the City's prior written consent.
24. **Recordation:** Neither this Agreement nor any memorandum, affidavit, or other writing with respect thereto, shall be recorded by the City or the Tenant or by anyone acting through, under, or on behalf of the City or the Tenant. The recording thereof in violation of this Paragraph 24 shall make the Agreement null and void at the election of the non-recording Party.
25. **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.
26. **Counterpart Signatures:** 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.

**WITNESS** the following signatures:

**[SIGNATURES ON THE FOLLOWING PAGES]**

**LANDLORD:**  
CITY OF HAMPTON, VIRGINIA

By \_\_\_\_\_  
City Manager/Authorized Designee

\_\_\_\_\_ Date

APPROVED AS TO CONTENT:

By David J. McAuliffe  
Department of Parks, Recreation  
& Leisure Services

12/28/2023  
Date


APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By [Signature]  
City Attorney's Office

December 26, 2023  
Date

**[SIGNATURES CONCLUDE ON THE FOLLOWING PAGE]**

**TENANT:**  
SWINGERS GOLF CLUB, LLC

By   
Name: Ryan Barber  
Title: Manager

12/21/23  
Date

COMMONWEALTH OF VIRGINIA  
CITY OF NEWPORT NEWS, to-wit:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 2023 by Ryan Barber, Manager of Swingers Golf Club, LLC, a Virginia limited liability company, for and on its behalf. He  is known to me personally, or  has produced \_\_\_\_\_ as identification.

  
Notary Public

My Commission expires: 09/30/2027

Registration No: 273597

