

LEASE AGREEMENT

This Lease Agreement (the "Lease") is between the City of Hampton, a municipal corporation of the Commonwealth of Virginia (the "City") and Peninsula Golf Center, Inc. (f/k/a Peninsula Driving Range, Inc.), a Virginia corporation, having its principal place of business at 100 Seldendale Drive, Hampton, Virginia 23669 (the "Tenant"). The City and Tenant shall be 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. City shall lease and Tenant shall rent the property located 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.

a. The term of this Lease shall be for a period of five (5) years, commencing on the 1st day of October, 2016 (the "Commencement Date") and ending at midnight on the 30th day of September, 2021 (the "Term")

b. If Tenant shall continue to occupy the Leased Premises after the termination or expiration of the Term (including a termination by notice under the terms of this Lease), any such 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 City shall desire to regain possession of the Leased Premises, then City may re-enter and take possession of the Leased Premises with or without the use of any legal process in force in the Commonwealth of Virginia. Tenant shall indemnify City against all liabilities and damages sustained by the City by reason of such retention of possession.

3. Permitted Use. The Leased Premises are to 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. Tenant shall pay as base rent for the Leased Premises the sum of \$10,200.00 per year ("Rent") , payable in equal monthly installments of \$850.00, in advance,

without demand therefor, and on the first day of each and every calendar month during the Term of this Lease.

The Rent and any other sums payable by Tenant to City shall be paid at such address as City may direct, or if none specified, to the address for delivering notices in Paragraph 13.

If Tenant fails to pay any installment of Rent within ten (10) days after the same becomes due, Tenant shall pay 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 Tenant under this Lease.

5. Taxes and Fees. 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 Lease Premises. Failure to timely pay such taxes, fees or assessments shall be grounds for termination of the Lease.

6. Insurance. The Tenant agrees to maintain in full force and effect on the Lease Premises and all improvements thereon throughout the Term, a general liability insurance policy in an amount of at least One Million Dollars (\$1,000,000.00) per occurrence, and not less than Two Million Dollars (\$2,000,000) in the aggregate, which names 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.

7. Indemnification and Hold Harmless. Tenant unconditionally agrees to release and to indemnify and hold harmless City, 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 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 Tenant or others claiming under Tenant, unless the death, injury or damage was sustained as a result of the gross negligence or willful misconduct of City. Tenant's release and indemnity includes, but is not limited to, any claims as defined in this or materials, hazardous wastes or other contaminants or any adverse environmental condition Paragraph, 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 Lease or Tenant's tenancy.

8. 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 City's prior written consent. Any such sublease or assignment without consent shall be void, and shall, at the option of City, terminate this Lease. No assignment of this Lease or subletting of the Leased Premises, with or without the consent of City, shall not 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.

9. Access. The Tenant shall allow the City, or its authorized agents, to enter the Leased Premises for purposes of inspection or as required by the City.

10. Landscaping and Improvements. The Tenant agrees to landscape the Leased Premises and keep all of the improvements 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 causes not within the control of the Tenant, the Tenant shall vacate the Leased Premises; and the rent shall terminate upon the day 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 releases the City from any liability whatsoever and covenants not to file any suit or claim therefor.

12. Default(s). In the event of any failure of Tenant to timely and fully comply with any terms 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, 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, City 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 City. 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 said costs incurred in enforcing this provision.

13. 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.

City's address for notices shall be:

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

With Copy to:

City of Hampton
22 Lincoln Street
Hampton, Virginia
Attention: Patricia Melochick

Tenant's address for notices shall be:

William Carson, President
Peninsula Golf Center, Inc.
36 Meadowbrook Drive
Hampton, Virginia 23666

With Copy to:

Lawrence G. Cumming, Esq.
2236 Cunningham Drive
Hampton, Virginia 23666

14. 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.

15. 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.

This Lease shall be construed as 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.

16. 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 the City 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 City to the Tenant of the filing thereof.

17. 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.

18. Successors and Assigns. The terms, conditions, covenants and agreements in this Lease to be kept and performed by City and Tenant shall bind and inure to the benefit of their respective heirs, personal representatives, successors and approved assigns.

19. 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.

20. Special Right to Terminate. The parties acknowledge that City has certain powers, purposes and responsibilities by virtue of being a municipality. To discharge its powers, purposes or responsibilities, City 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 is necessary for any public purpose, upon action by City Council. Any Rent paid in advance by Tenant shall be returned by City in an amount prorated according to the actual period of occupancy. It is agreed that the power of City to terminate or interrupt Tenant's use of the Leased Premises shall not be arbitrarily or capriciously exercised.

21. Tenant's Property. Should the Tenant vacate the Leased Premises, for any reason, said 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.

22. Alterations. The Tenant shall make no modifications, alterations or improvements to the Leased Premises without the City's prior written consent.

23. Recordation. Neither this Lease nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by City or Tenant or by anyone acting through, under, or on behalf of the City or Tenant. The recording thereof in violation of this provision shall make this Lease null and void at the election of the non-recording party.

23. Signature. The undersigned are duly authorized to execute this agreement for the City and the Peninsula Golf Center, Inc.

[Signatures appear on the following page.]

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager/Authorized Designee

PENINSULA GOLF CENTER, INC.

By: _____
William J. Carson, President

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

I, the undersigned, Notary Public in and for the City/County and State aforesaid, do hereby certify that William J. Carson, in his capacity as President of Peninsula Golf Center, Inc., whose name is signed above has acknowledged the same before me in my City and State aforesaid and is either personally known to me or has produced a valid form of identification.

GIVEN under my hand this _____ day of _____, 2016.

NOTARY PUBLIC

My commission expires: _____

Approved as to Form and Legal Sufficiency:

Approved as to Content:

Patricia A. Meloichick
Sr. Deputy City Attorney

Kevin Myers,
Director, Parks, Recreation &
Leisure Services