

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 the **PENINSULA GOLF CENTER, INC.**, a stock corporation organized in the Commonwealth of Virginia (the "Tenant" or the "Center"), with its principal office located at 100 Seldendale Drive, Hampton, Virginia 23669, (the City and the Center 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 Center shall rent 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 Center 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 October 1, 2021 at 12:00 a.m. EST and ending September 30, 2026 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 Center agrees not to use the Leased Premises for any purposes other than as specifically mentioned herein, and the Center agrees not to use the Leased Premises for any unlawful purpose.
4. Rent: The Center shall pay as based rent for the Leased Premises the sum of \$10,812.00 per year (the "Rent"), payable in equal monthly installments of \$901.00, 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 Center 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 Center fails to pay any installment of the Rent within ten (10) days after the same becomes due, the Center 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 Center under this Agreement.

5. Taxes and Fees: The Center 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 Center 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 Center 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 to the policy would be that which is attached to the Center's liability policy that acknowledges the City as additional insured on all policies the City are made additional insured(s). This 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.	
Coverage Parts Required	Coverage Limits
Commercial General Liability (CGL) 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
Workers' Compensation Employer's Liability	Per Virginia Statute (Waiver Provided)
Waiver of Subrogation 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 Center 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 Center or others

claiming under the Center, unless the death, injury, or damage was sustained as a result of the gross negligence or willful misconduct of the City.

The Center'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 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 Center's tenancy.

8. Assignment and Sublease: The Center 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 Center 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 Center 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 Center 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 Center, the Center 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 Center shall have no legal or equitable claim for damages against the City. The Center 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 Center to timely and fully comply with any terms of this Agreement, the Center 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 Center, 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 Center, terminate the Center'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 Center 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 Center. In order for the Center to remove its property from the Leased Premises pursuant to Paragraph 22, the Center 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 Center 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 Center 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 Center'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 Center or by the Center 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 Center: Peninsula Golf Center, Inc.
36 Meadowbrook Drive
Hampton, Virginia 23666
Attn: William J. Carson, President

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

15. Waiver: No waiver by the City or the Center 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 Center 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 Center, or others claiming by or through the Center, 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 Center 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 Center 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 Center 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 Center installed and is the owner of certain building and improvements situated on the Leased Premises. Should the Center vacate the Leased Premises, for any reason, the Center 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 Center 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 Center at its sole expense.
23. Alterations: The Center 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 Center or by anyone acting through, under, or on behalf of the City or the Center. 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 _____ Date _____
City Manager/Authorized Designee

APPROVED AS TO CONTENT:

By _____ Date _____
Department of Parks, Recreation
& Leisure Services

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By _____ Date _____
City Attorney's Office

[SIGNATURES CONCLUDE ON THE FOLLOWING PAGE]

TENANT:
PENINSULA GOLF CENTER, INC.

By _____
William J. Carson, President

Date

COMMONWEALTH OF VIRGINIA
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by William J. Carson, President of Peninsula Golf Center, Inc. a Virginia stock corporation on its behalf. He is known to me personally, or has produced _____ as identification.

Notary Public

My Commission expires: _____

Registration No: _____