

## LEASE

THIS LEASE on this \_\_\_\_ day of April, 2017 is by and between the City of Hampton, a municipal corporation of the Commonwealth of Virginia (hereinafter referred to as City, and the Peninsula Metropolitan YMCA, Inc., a Virginia non-stock corporation with a principal place of business at 41 Old Oyster Point Road, Suite C, Newport News, Virginia 23602 doing business as The First Tee of Virginia Peninsula (“First Tee”) having a principal place of business at 1003 Brick Kiln Blvd., Newport News, VA 23602 (collectively, “the Parties”).

## WITNESSETH:

The City shall lease to First Tee property located at 320 Butler Farm Road (LRSNs 7001858, 6000750), otherwise known as The Hamptons Golf Course including the concession and seating areas, restrooms, clubhouse, practice putting green, driving range, and golf course for its First Tee Program (“the Program”) upon the terms and conditions hereinafter set forth.

## AGREEMENT:

NOW THEREFORE IN CONSIDERATION of the warranties, covenants, and commitments contained in this Lease, the Parties agree as follows:

1. **Non-Exclusive Rights.** The City grants a non-exclusive right to First Tee use the common areas of the Hamptons including the concession and seating areas, restrooms, clubhouse, practice putting green, driving range, and golf course in exchange for certain covenants of First Tee. The City retains the right to limit access to these areas for other events and/or grant use of such portions of the Hamptons not being used by First Tee that do not interfere with the Program.
2. **Term.** This initial term of this Lease shall be for a three (3) year period unless terminated earlier as described below. The Parties may renew this Lease for one (1) additional two (2) year term upon the same terms and conditions provided. Either party may terminate this Lease by providing one-hundred and twenty (120) days written notice to the other party.
3. **Use of Facility and Property.** The use and availability of the property and facilities at the Hamptons by First Tee shall be for a total of 250 hours of programming for First Tee per calendar year.
  - a. First Tee shall be solely responsible for all operational costs associated with providing the First Tee program at the Hamptons, unless otherwise provided in this Lease.
  - b. First Tee agrees to supervise Program participants at all times. The City shall not be responsible for supervising participants.
  - c. First Tee agrees that Program participants may not operate golf carts at any time. Golf carts may only be operated by First Tee instructors. Violation of this provision may be grounds for termination of this Lease.
  - d. First Tee shall not, at any time, allow the use of any cigarettes, tobacco products, alcoholic beverages, or drugs on the property.

- e. First Tee agrees to pick up after participants and ensure that all golf course space is free of debris, trash, and equipment after each Program session.
  - f. First Tee agrees that at all times it will conduct the Program with full regard to public safety, and will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with the city to assure such safety. First Tee agrees not to bring onto the premises any material, substances, equipment or objects which are likely to endanger the life of or cause bodily injury to any person on the property or which are likely to constitute a hazard to the property thereon.
  - g. If a situation develops concerning the use of the premises, First Tee's Executive Director shall first seek resolution with the manager of the Hamptons. If the problem cannot be resolved at that level, First Tee shall seek assistance from the Director of the Department of Parks, Recreation, and Leisure Services.
  - h. First Tee's Executive Director will meet annually, or on an as needed basis, with the manager of the Hamptons to determine specific programming needs.
4. **Equipment.** First Tee shall provide all equipment necessary for the Program, unless otherwise indicated in this Lease. The City is not responsible for any lost or stolen equipment.
5. **City's Maintenance.** The City will be responsible for all utilities, maintenance, and management costs associated with the Hamptons, provided however, that First Tee shall be solely responsible for its own long distance, internet, and cable charges.
6. **Scheduling.** The Program Executive Director shall work with the manager of the Hamptons regarding any scheduling conflicts that arise regarding other events to be held at the Hamptons Golf Course. Should First Tee plan to cancel any Program session, First Tee shall provide notice to the Hamptons golf course manager as soon as possible to permit the space to be used for other events.
7. **Signage/Logos and Marks.** The City agrees that First Tee may display certain logos and marks of The First Tee in recognition of the Hamptons as a facility of First Tee at the Hamptons, but that such logos and marks must be approved by the City prior to display. First Tee shall provide proof of copyright ownership of such logos and marks or permission to use any logos and marks. The location of such logos and marks shall be at the sole discretion of the Hamptons management, and the City reserves the right to remove and dispose of all unauthorized signage, logos, and marks.
8. **Insurance.** During the Term of this Lease and any renewal thereof, First Tee must obtain and keep in place general liability insurance including but not limited to coverage for all premises and non-premises operations, independent First Tees, broad form property damage coverage, including explosion, collapse, and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate and with property

damage limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Prior to beginning performance under this Lease, and no later than five (5) business days before beginning this Lease, First Tee shall submit to the Lease Administrator for the City's Parks, Recreation, and Leisure Services Department certificates of insurance with endorsements to the policy(ies) naming the "City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669" as an additional insured. The endorsement is a document separate from the Certificate of Insurance that is an actual written endorsement to the policy that names the City of Hampton as an additional insured. Many liability policies have a provision that allows for automatic coverage as an additional insured for parties to a Lease, such as this Lease, that requires said party to be named as an additional insured. If this is the case, the policy must be provided. 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 First Tee without having provided the City written notice at least thirty (30) days prior to any such cancellation or modification. First Tee 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.

**9. Compliance With All Laws.** First Tee shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted in the operation of the Program and the use of the Hamptons' facilities set forth herein. First Tee represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Lease prior to the initiation of operation of the Program, including, but not limited to any and all licenses, permits, or other registrations that may be required by the City.

**10. Termination for Cause.**

- a. In the event that First Tee shall for any reason or through any cause be in default of the terms of this Lease, the City may give First Tee written notice of such default by certified mail/return receipt requested at the address set forth in the Notice Section of this Lease. First Tee shall have ten (10) days from the date such notice is mailed to cure the default. Upon First Tee's failure to cure the default, the City may immediately cancel and terminate this Lease as of the mailing date of the default notice.
- b. In the event of violations of law, safety, or health standards or regulations by the First Tee, this Lease may be immediately cancelled and terminated by the City and the provisions herein with respect to the opportunity to cure default shall not be applicable.
- c. The City may cancel a Program session 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 First Tee as a result of any such cancellation or termination.

- 11. Hold Harmless – Indemnification.** It is understood and agreed that First Tee hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of First Tee, its subcontractors, agents, employees, or program participants under or in connection with this Lease. First Tee agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Lease, and/or (c) the operation of the First Tee Program or those for whom First Tee is legally liable. Upon written demand by the City, First Tee shall assume and defend at First Tee's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials. The provisions of this Section shall survive the termination of this Lease.
- 12. Certification Regarding Minors.** First Tee further represents that all employees, subcontractors, or others engaged by First Tee to perform the services prescribed herein who will be in the presence of or have direct contact with minors have not been convicted of a felony or any offense involving the sexual molestation, rape, or physical or sexual abuse of a child.
- 13. Compliance with ADA; Nondiscrimination.** First Tee agrees to comply with Title VI of the Civil Rights Act of 1964, the 1994 Disabilities Act and all applicable regulations of the Department of the Interior are incorporated herein by reference and any amendments or supplements thereto shall be deemed incorporated by reference upon enactment. First Tee agrees not to discriminate against any person because of race, color, sex, religion, national origin, marital status, age, ancestry, or disability relative to Program participation or employment.
- 14. No Assignment.** First Tee shall not assign its rights and duties under this Lease without the prior written consent of the City.
- 15. Applicable Law and Venue.** This Lease shall be deemed to be a Virginia agreement 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 Lease shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Venue shall be in a court of competent jurisdiction in the City of Hampton, Virginia or, if applicable, in the United States District Court for the Eastern District of Virginia, Newport News Division, for the purpose of any suit or other proceeding brought in connection with or arising out of this Lease.

**16. Rights of Others or Third Parties.** This Lease does not create any rights, claims, or benefits to any person that is not a party to this Lease nor create or establish any third party beneficiary.

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

**18. Severability.** In the event that any provision of this Lease is deemed unenforceable, the Parties agree that all other provisions of this Lease shall remain in full force and effect and shall not be affected thereby.

**19. Notices.** A notice, communication, or request under this Lease 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 First Tee:           The First Tee of the Virginia Peninsula  
                                  Attention: Tom Carnevale  
                                  1003 Brick Kiln Blvd., N.N., VA 23602  
                                  Email: Thomas.Carnevale@peninsulaymca.org  
                                  Phone: 757-342-1492

As to City:                City of Hampton  
                                  Department of Parks, Recreation and Leisure Services  
                                  Attention: Kevin Myers  
                                  22 Lincoln Street, 5th Floor  
                                  Hampton, VA 23669  
                                  Email: kevin.myers@hampton.gov  
                                  Phone: (757) 727-6348

**20. Authority to Sign.** Each person signing this Lease represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Lease. Each party represents and warrants to the other that the execution and delivery of the Lease and the performance of such party's obligations hereunder have been duly authorized and that the Lease is a valid and legal agreement binding on such party and enforceable in accordance with its terms. This Lease 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 hereto.

WITNESS the following signatures:

**CITY OF HAMPTON**

By: \_\_\_\_\_  
City Manager

**PENINSULA METROPOLITAN YMCA, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017  
by \_\_\_\_\_, \_\_\_\_\_ (title) of Peninsula Metropolitan YMCA, Inc.,  
a Virginia corporation, on its behalf. He/She  is known to me personally, or   
has produced \_\_\_\_\_ as identification.

My commission expires: \_\_\_\_\_ Notary Public

\_\_\_\_\_

**APPROVED AS TO CONTENT:**

**APPROVED AS TO FORM &  
LEGAL SUFFICIENCY:**

\_\_\_\_\_  
Dept. of Parks, Recreation, & Leisure  
Services

\_\_\_\_\_  
Sr. Assistant City Attorney