

ORDINANCE NO. 7305-16

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, A CERTAIN SETTLEMENT AGREEMENT AND LEASE, BOTH BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND VIRGINIA HOSPITALITY SERVICES, INC., AND BOTH DATED THE 13TH DAY OF SEPTEMBER, 2016.

WHEREAS, the City Manager has recommended that the City of Newport News (the "City") lease space at Newport News Golf Club at Deer Run for the operation of a restaurant and concessions (the "Project"); and

WHEREAS, the City has received proposals from prospective vendors and advertised, as required by law, the proposal to lease space for this Project; and

WHEREAS, the City Manager has recommended to the City Council that a lease for this Project be awarded to the current operator of the Project, Virginia Hospitality Services, Inc ("VHS"); and

WHEREAS, VHS and City desire to settle a dispute as to rent owed under the previous lease for this Project, said dispute arising because of the destruction by fire of a pavilion on the premises.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Settlement Agreement by and between the City of Newport News, Virginia, and Virginia Hospitality Services, Inc., dated the 13th day of September, 2016, a copy of which is attached hereto and made a part hereof.

2. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Lease by and between the City of Newport News, Virginia, and Virginia Hospitality Services, Inc., dated the 13th day of September, 2016, a copy of which is attached hereto and made a part hereof, contingent upon Virginia Hospitality Services, Inc. first executing the aforesaid Settlement Agreement and either paying the City the amount due therein or executing a Promissory Note for the same.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON SEPTEMBER 13, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the **CITY OF NEWPORT NEWS, VIRGINIA**, and **VIRGINIA HOSPITALITY SERVICES, INC.**, as of September 13, 2016.

RECITALS

I. The Parties and The Agreement of Lease

1. The City of Newport News, Virginia, hereinafter “the City,” is a municipal corporation organized and existing under the laws of the Commonwealth of Virginia. It owns the Newport News Golf Club at Deer Run, located in Newport News, Virginia.

2. Virginia Hospitality Services, Inc., hereinafter “VHS” is a corporation organized and existing, under the laws of the Commonwealth of Virginia. Its principal place of business is 901 Clubhouse Way, Newport News, Virginia 23608.

3. By Agreement of Lease dated October 27, 2009, hereinafter “the Lease,” City leased to VHS certain premises at the Newport News Golf Club at Deer Run, which are more particularly described in the aforementioned Lease (“the Premises”), and which included the use of a pavilion.

4. The pavilion referred to in the Lease was destroyed by a fire in July of 2012.

5. The Lease had an initial term of November 15, 2009, through December 31, 2012, and provided for renewal for an additional three (3) year term, upon consent of the City Council.

6. By a Renewal of Lease dated October 9, 2013, the City and VHS renewed the Lease for a three year term from January 1, 2013 to December 31, 2015, and, in recognition of the loss of the pavilion, reduced the percentage rent component from 10% of gross sales to 7% of gross sales, effective January 1, 2013, until such time as the pavilion was replaced and made available to VHS for use. The pavilion has not yet been replaced.

7. VHS continued its tenancy through the end of the renewal term, and has continued to

occupy and operate on the Premises as a holdover tenant since January 1, 2016.

II. The Dispute

8. Section 19 of the Lease provides that the City is under no obligation to rebuild or repair the pavilion in the event of substantial damage thereto. After the destruction of the pavilion by fire in July of 2012, VHS requested that City renegotiate and reduce the rent for the Lease, and City agreed to do so, via the Renewal of Lease referenced in paragraph 6 above.

9. Subsequent to the execution of the Renewal of Lease, it became apparent that the reduction of the percent rent component to 7% was inadequate to account for the loss of business attributable to the loss of the pavilion and VHS requested that the City further reduce the rent.

10. The City did not further reduce the rent during the term of the Lease, and a replacement pavilion was not constructed and made available to VHS for its use. VHS fell into arrears with its rental payments, but continued to provide service at the Premises.

11. The Parties desire to resolve their differences pertaining to the amounts owed under the Lease without resorting to litigation. Both the City and VHS enter into this Agreement without making, directly or indirectly, any admission of law or fact in any pending or future litigation, but rather with the sole purpose of resolving their differences and avoiding the cost and inconvenience of litigation.

TERMS AND CONDITIONS

Now, therefore, in consideration of the mutual covenants and conditions contained herein, the City and VHS agree as follows:

12. Had the percent rent component of the Lease been reduced to 4% of gross sales as of January 1, 2013, VHS would be \$2,426.11 in arrears through December 31, 2015. This sum does not include late penalties or delinquent rental payments for the holdover period.

13. On or before October 1, 2016, VHS agrees to pay to the City the sum of

\$9,579.06. The City agrees accept said payment in satisfaction of VHS' obligation to pay unpaid rent and late fees for the period beginning on January 1, 2013 and ending on August 31, 2016.

14. In lieu of the cash payment required by paragraph 13 of this Agreement, VHS may execute, and the City agrees to accept, a promissory note in the amount of \$9,579.06 plus interest in satisfaction of VHS' obligation to pay as described in Paragraph 13. A copy of the note is attached hereto as Exhibit A.

15. If VHS chooses to execute the note described in paragraph 14 of this Agreement, the City agrees that VHS may earn credit against the amount owed pursuant to the note by providing food service for City sponsored events or by making "qualifying improvements" to the Premises. "Qualifying improvement" means a substantial improvement or renovation to the Premises, including equipment purchases, that VHS is under no obligation to provide pursuant to the terms of any lease with the City. Whether any improvement constitutes a "qualifying improvement," and the amount of credit to be received therefor, shall be determined by the City Manager in his sole reasonable discretion. VHS shall submit a written proposal with respect to any such improvement prior to actually performing the work, for review by the City Manager and his determination hereunder. Any qualifying improvement made hereunder shall become the property of the City.

16. The City and VHS each hereby warrant, represent and acknowledge that it has the right and authority to execute this Agreement and to receive the consideration given therefor; that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the rights covered by this Agreement; that the consideration received by it for this Agreement is fair, reasonable, and just and constitutes lawful consideration supporting the execution of this Agreement; that through its duly authorized representative, it has read all provisions of this Agreement in full, has had an opportunity to review those provisions with its attorney, and understands them and voluntarily agrees to be bound thereby; and that it is entering into this Agreement based solely and exclusively upon

its or its counsel's own analysis of the facts and information of which it or its counsel is independently aware and not based upon or in reliance upon any statements or representations of the other party (except to the extent such statements or representations are fully and expressly set forth herein).

17. This Agreement compromises and resolves disputes between the parties and was reached by the parties to avoid future costs and to eliminate the uncertainty of litigation. Nothing contained in this Agreement shall constitute an admission of liability or of fact by any of the parties.

18. No provision of, or breach or default under, this Agreement shall be deemed waived by course of conduct of any other party, and the failure of either of the parties to insist upon strict adherence to any term of this Agreement shall not constitute a waiver of any right arising hereunder or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver of any provision of, or breach or default under, this Agreement, to be valid, must be in writing and signed by the party to be charged with such waiver and must state that it is intended to constitute a waiver of such provision, breach or default. No such waiver shall be deemed a waiver of any subsequent breach or default of the same or a similar nature.

19. This Agreement may not be modified, amended, supplemented or canceled except by a written agreement signed by the parties or their respective successors or assigns.

20. This Agreement contains the entire agreement and understanding among and between the parties hereto with respect to the dispute, as described in Paragraphs 8 through 11 hereof, and supersedes and replaces all prior understandings and agreements both written and oral with respect thereto. This Agreement shall not be construed to affect the obligations created by the Lease, except to the extent provided by Paragraph 13 of this Agreement.

21. This Agreement shall be governed by the laws of Virginia.

22. Each of the parties agree to cooperate in executing any and all supplementary

documents and to take all additional actions that may be reasonably necessary or appropriate to give full force and effect to this Agreement.

23. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

24. The parties agree that this Agreement is the product of a negotiation between the parties. In the event of a dispute concerning the interpretation of this Agreement or any of its terms or provisions, the Agreement shall be deemed to have been drafted jointly by all parties.

25. The parties hereto do not intend by any provision hereof to create any third party beneficiaries, nor to confer any right or benefit upon any person or entity not a signatory to this Agreement.

26. This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when fully executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

27. The descriptive headings contained herein are solely for convenience, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.

28. The provisions of this Agreement are not severable. If any of the provisions hereof is found by a court of competent jurisdiction to be invalid, unconstitutional or otherwise unenforceable, then this Agreement shall be void.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the day and year first above written, their officers having first been duly authorized to do so.

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
City Manager

ATTEST:

City Clerk

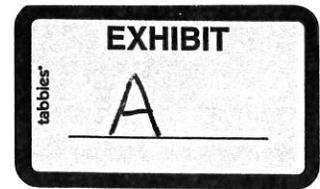
APPROVED AS TO FORM:

City Attorney

VIRGINIA HOSPITALITY SERVICES, INC.

By: _____
President/Vice President

sdm14639



PROMISSORY NOTE

Virginia Hospitality Services, Inc., promises to pay to the order of the City of Newport News, Virginia, the sum of \$9,579.06, said sum being due and payable in full on or before August 31, 2019, and payable without offset at the City of Newport News Department of Parks, Recreation and Tourism, 700 Town Center Drive, Suite 320, Newport News, Virginia 23606, with interest at 4.25% per annum beginning October 1, 2016 until such time as the indebtedness is paid in full. Payments and credits under this note will be applied first to accrued interest, then to principal.

The undersigned reserves the right to prepay this note in whole or in part at any time without penalty.

Presentation, demand, protest, notices of dishonor and protest, the benefits of homestead exemptions and all defenses and pleas on the ground of any extension or extensions of the time of payment or of the due dates of this note, in whole or in part, before or after maturity, with or without notice, are hereby waived by the maker and by any and all endorsers, sureties, guarantors and obligors hereof, it being further agreed that the undersigned will pay any collection expenses, court costs, and attorney's fees, in the amount of twenty percent (20%) of the sum due hereon, which may be incurred in the collection or enforcement of this note or any part hereof.

Given under the hand and seal of its duly authorized officer and agent this ___ day of _____, 2016, by Virginia Hospitality Services, Inc.

Virginia Hospitality Services, Inc.

By: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY OF NEWPORT NEWS, to wit:

The foregoing instrument was acknowledged before me this ___ day of _____, 2016, by _____ as _____, of Virginia Hospitality Services, Inc..

Notary Public

My commission expires: _____
Registration No. _____

THIS AGREEMENT OF LEASE, made this 13th day of September, 2016, by and between **CITY OF NEWPORT NEWS, VIRGINIA** (hereinafter called "Landlord" or "City"), and **VIRGINIA HOSPITALITY SERVICES, INC.**, a Virginia corporation, (hereinafter called "Tenant" or "VHS"):

W I T N E S S E T H:

1. Premises. Landlord hereby leases and demises unto Tenant, and Tenant hereby takes and leases from Landlord, certain premises known as the restaurant area in the Deer Run Clubhouse consisting of approximately 2,209 square foot, as shown on "Exhibit A" attached hereto and made a part hereof, the entire second floor of the Clubhouse consisting of approximately 3,196 square feet, a storeroom in the golf cart building consisting of approximately 1,250 square feet as shown on "Exhibit B", attached hereto and made a part hereof, and the tenth tee snack bar area, consisting of approximately 5,586 square feet (including a building of approximately 1,500 square feet, as shown on "Exhibit C", attached hereto and made a part hereof (hereinafter called "demised premises").

2. Term.

(a) The term of this Lease shall be for a period of three years, to commence on September 1, 2016, and shall end on August 31, 2019, unless previously terminated in accordance with the terms herein.

(b) Landlord is providing Tenant with a temporary tent facility for its use while Landlord pursues the construction of a pavilion facility to replace the pavilion that was destroyed by fire in July of 2012. In the event the construction of the new pavilion facility is completed before the expiration of this Lease, Landlord, in its sole discretion, shall have the option of either (i) terminating this Lease by providing thirty (30) days written notice of that effect to Tenant, or (ii)

renegotiating the terms of this Lease with Tenant and increasing the rental rate to include the newly constructed pavilion.

3. Construction of the Demised Premises. It is understood and agreed to by Landlord and Tenant that Tenant is accepting the demised premises in its present condition. In the event Tenant chooses not to use the tenth tee snack bar, it shall, for the month of April through October, keep one additional snack and beverage cart in operation than would otherwise be required; however, in no event shall more than two (2) carts be required at any time. If Tenant desires to make any improvements to the demised premises, the improvements shall be done at Tenant's sole cost and expense. If any improvements will affect the building structurally, Tenant will obtain prior written permission from the Landlord to make such structural improvements. Any other improvements to the building, even though they may not affect it structurally, will require approval by the city manager or his designee prior to the commencement of same.

4. Purpose. The demised premises shall be used for the purpose of conducting therein a restaurant, snack bar and catering business. Tenant covenants and agrees that all times during the term hereof (i) Tenant will actively conduct such a business in the demised premises and keep the demised premises open for business during customary business hours (not less than eight (8) hours per day, Sunday through Saturday) of the golf course as currently established or as may be amended by Landlord and (ii) the demised premises shall be used only for the said purpose. At a minimum, Tenant will provide for breakfast and lunch service. Tenant shall also provide mobile snack bar and beverage cart services to accommodate seasonal play. Such mobile snack bar and beverage cart services shall be in operation no less than seven (7) days a week; from June 1st through August 31st the cart service shall be operated from 9:00 a.m. through 7:00 p.m., and for the months of May and

September 9:00 a.m. through 5:00 p.m. Two mobile snack bar and beverage carts shall be operated on Friday, Saturday and Sunday from May through September. At least one cart will be operated on Friday, Saturday and Sunday during the months of March, April, October and November. Exact hours and days may be modified with prior permission of the Landlord. Tenant will be permitted to close its restaurant facility for up to one week per Lease year, between mid-January and mid-February for maintenance purposes. In the event that Tenant closes for maintenance purposes as above provided, Tenant agrees that it will provide vending services for non-alcoholic beverages to golf course patrons during the period of closure. Tenant may prohibit its patrons from bringing outside food or beverages onto the demised premises as defined in paragraph 1.

5. Trade Name. Tenant agrees to operate its business under the trade name of VIRGINIA HOSPITALITY SERVICES, INC., and no other name, without the prior written consent of Landlord. Landlord and Tenant agree that Tenant owns the name VIRGINIA HOSPITALITY SERVICES, INC., and any other trade name that Tenant uses with Landlord's prior written consent.

6. Definition of "Term" and "Lease Year". Except where the context clearly requires otherwise, the word "term", whenever used in this Lease with reference to the term hereof, shall be construed to include any renewal term, as well as the original term. The words "Lease year", as used in this Lease, shall be construed to mean each twelve (12) month period commencing on (i) the commencement of the term if the term begins on the first day of a month, or (ii) the first day of the month following commencement of the term if the term does not begin on the first day of a month; provided, however, that the period of the term, if any, beginning after the end of the last full twelve (12) month lease year of this Lease shall be deemed to be a Lease year even though it comprises less than twelve months.

7. Rent.

(a) Landlord reserves, and Tenant covenants to pay to Landlord at the Department of Parks, Recreation and Tourism, Fountain Plaza Two, 700 Town Center Drive, Suite 320, Newport News, Virginia, 23606, or to any other location requested by Landlord in writing, without right of offset, without prior demand therefor being made, the rent for the demised premises, and for the rights herein granted Tenant, a minimum rental (hereinafter referred to as "minimum rent") of: (i) from September 1, 2016, through August 31, 2019, Five Hundred Dollars (\$500.00) per month (or a portion thereof for a fraction of a month) in advance on or before the first day of each and every month during the term hereof; plus (ii) a sum (hereinafter referred to as "percentage rent") equal to four percent (4%) of all "gross sales" (as hereinafter defined). Percentage rent shall be paid by Tenant to Landlord, without prior demand therefor being made, on or before the 15th day of each month for the prior month's gross sales, in respect of which percentage rent is due in accordance with the provisions of this Lease.

(b) Security Deposit: No security deposit is required.

(c) [Intentionally left blank.]

(d) Wherever it is provided in this Lease that Tenant is requested to make any payment to Landlord, other than minimum rent or percentage rent, such payment shall be deemed to be additional rent and all remedies applicable to the nonpayment of rent shall be applicable thereto. Minimum rent, percentage rent and additional rent shall be paid without counterclaim, setoff, deduction or defense.

8. Gross Sales Defined. The term "gross sales" as used in this Lease, means the amount of all sales whether cash, credit, or C.O.D., of whatever character (including, but not being limited

to, merchandise and service of all kinds and nature) made in, on, from or through the demised premises and tent (including sales made from or through vending machines) by Tenant or any other occupant of the demised premises or tent, less: (a) all credits, refunds, allowances and discounts granted to customers in respect of said sales and (b) all excise or sales taxes, if any, which are levied or imposed by governmental authority upon or in connection with said sales, if a specific record of such taxes is made at the time of each sale and said taxes are separately charged to and collected by Tenant from its customers. Tenant covenants and agrees not to divert sales, directly or indirectly, from the demised premises or tent to any other place of business.

9. Statements of Gross Sales.

(a) Within fifteen (15) days after the end of each calendar month during the term, Tenant shall deliver to Landlord without demand, a statement signed and certified by Tenant (if Tenant is a corporation or partnership, signed and certified by one of Tenant's officers or general partners, as appropriate) to be true and correct, showing the gross sales made during such month. Within thirty (30) days after the end of each Lease year, Tenant shall deliver to Landlord, without demand, a statement, signed and certified as above to be true and correct, showing the gross sales made during such Lease year, and within four (4) months after the end of each Lease year, Tenant shall deliver to Landlord, without demand, a confirmatory (or amended, if necessary) statement certified by a Certified Public Accountant, stating the total amount of Tenant's gross receipts for the previous Lease year. In no event shall Landlord be construed or held to be a partner or an associate of Tenant in the conduct of its business, nor shall Landlord be liable for any debts incurred by Tenant in the conduct of its business.

(b) In addition to any and all other remedies provided in this Lease and/or by law

and/or by equity, Tenant agrees to pay Landlord a flat sum of Fifteen Dollars (\$15.00) each and every time Tenant does not furnish Landlord with Tenant's monthly or annual statement of gross sales as required and within the time specified in this paragraph 9.

10. Tenant's Records. Tenant covenants that it will keep and maintain on the demised premises complete books and records in which it will promptly and accurately record all gross sales. At Landlord's request, Tenant shall make such books and records available for inspection on the demised premises at all reasonable times during the term and the year next following the expiration thereof, and Landlord and its representatives shall be accorded all reasonable help and cooperation from Tenant in connection with each such inspection. In the event any payment is made by Tenant which, upon a subsequent examination of Tenant's books, is found to be erroneous, the parties hereto agree that they will promptly adjust the error through an appropriate credit, payment or refund, as the circumstances may require. If such examination discloses that the amount of gross sales actually made by Tenant for the period of time covered by such examination was greater than the amount previously reported as made by Tenant for such period of time, Tenant shall pay to Landlord the reasonable cost of such audit (in addition to the additional percentage rent); otherwise Landlord shall pay the cost of such examination.

11. Late Payments. Tenant covenants and agrees to pay interest at the rate of ten percent (10%) per annum, payable monthly or One Hundred and 00/100 Dollars (\$100.00), whichever is greater, on all rents (including minimum rent, percentage rent and additional rent) and all other sums due under this Lease from the time said rents or sums accrue if they are not paid by the fifteenth day of each month, Landlord expressly reserving all other rights and remedies provided herein or by law in respect thereto. Tenant further agrees to pay (or to reimburse Landlord promptly if Landlord

elects to pay) any and all attorney's fees and court costs incurred in connection with the collection of delinquent rents and/or any enforcement of any Lease provisions due Landlord under this Lease.

12. Leasehold Taxes. Tenant covenants and agrees to pay all taxes and assessments levied and assessed upon the leasehold, i.e. the demised premises.

13. Trade Fixtures. Tenant agrees, at its own cost and expense, to fixture the demised premises with trade fixtures. Unless otherwise agreed by the parties, all trade fixtures installed in the demised premises by Tenant shall remain Tenant's property; provided, however that nothing herein shall be deemed to affect Landlord's remedy of distraint. Tenant agrees to repair (or to reimburse Landlord for the cost of repairing) any damage to the demised premises and the tent occasioned by the installation or removal of said trade fixtures. The term "damage" as used in this section does not include normal wear and tear from the routine operation of a food services business.

14. Utilities. Landlord will provide electric, water, sewerage and other utilities to the Premises.

15. Common Areas. Tenant, its customers, employees and invitees shall have the right to use and enjoy, in common with Landlord and other Tenants and their customers, employees, and invitees, the parking areas, approaches, entrances, exits and roadways and all other areas of the clubhouse and golf course intended for use by Landlord, Tenants and their customers, employees and invitees (hereinafter collectively called the "Common Areas") which Landlord agrees to provide for the reasonable operation of the golf course. It is expressly understood that the Common Areas are intended primarily for the use by customers of the restaurant and golf course, and Tenant accordingly agrees that its employees will not use the Common Areas for the parking or storage of any automobile, truck or any other vehicle owned or used by any of its employees, except as may be

approved in writing by Landlord. In order to assist Landlord in the enforcement of the provisions of this paragraph, Tenant agrees that within ten (10) days after being requested to do so, Tenant will furnish Landlord a written statement containing the names of all employees, agents and representatives employed by Tenant in or about the demised premises, and the license numbers of all vehicles owned or used by Tenant or said employees, agents or representatives. Landlord covenants that, at all times during the term, it will maintain the Common Areas in a good condition of repair and adequately lighted and paved, and that there will be at least the minimum number of parking spaces sufficient to satisfy governmental requirements at the time of the date of this Lease. Anything in this paragraph to the contrary notwithstanding, Landlord expressly reserves the right, from time-to-time, to construct buildings and/or enlarge existing buildings on or over the Common Areas so long as the required number of minimum parking spaces shall be available.

16. Landlord's Repairs and Right of Entry. Landlord covenants that it will, with reasonable dispatch after being notified in writing by Tenant of the need thereof, make such repairs to the Common Areas and outside utility lines and to the exterior of the demised premises, including the roof, gutters, downspouts and outside walls, including all exterior glass and doors, and to the clubhouse HVAC system, ceiling tiles, and light replacement, but excepting kitchen lighting, as may be necessary to keep the same in a good condition of repair; provided, however, that if the need for such repair is occasioned by a casualty resulting from negligence or willful act of Tenant, or any of its agents, employees, invitees or contractors, such repairs shall be made by Landlord, but the cost of such repairs shall be charged to and be promptly paid for by Tenant subject to Tenant being given credit for any money Landlord actually receives in respect to such damage from its insurance. Anything in the foregoing to the contrary notwithstanding, Landlord shall have no liability

whatsoever for damage or injury to person or property occasioned by its failure to make any such repair (e.g., injury damage to property resulting from leaks caused by a defect in the roof, outside walls, gutters and/or downspouts) unless, within a reasonable time after being notified in writing by Tenant of the need therefor, Landlord shall have failed to make such repair and such failure shall not have been due to any cause beyond Landlord's control, including, without limitation, strikes and/or inability to obtain materials and/or equipment at reasonable prices. Landlord, its agents, employees and contractors, shall have the right, from time-to-time, to enter and use insofar as may be necessary the demised premises for the purpose of making any of the aforesaid repairs. Tenant shall not be entitled to any reduction in rent or to any claim for damages by reason of any inconvenience, annoyance, and/or injury to business arising out of any repairs made by Landlord pursuant to this paragraph.

17. Tenant's Repairs. Tenant covenants that it will, at all times during the term and at its own cost and expense, keep the interior of the demised premises (including, without limitation, all kitchen and counter equipment, cabinetry, and fixtures; sound systems; cable systems; interior doors and locks and associated mechanisms; toilets not accessible to common areas; pipes; plumbing; sewer; wires and conduits; electric and gas lines; interior windows, doors and glass; all fixtures; fire suppression lines and fixtures; equipment and all other components or parts of the demised premises which Landlord has not expressly agreed to maintain or repair) in a good and safe condition of repair and in good working order (making such renewals and replacements as may be necessary). Tenant understands and agrees that it (not Landlord) shall be responsible for any damage caused by condensation in or around the duct work used for heating and/or air conditioning within the demised premises. Tenant covenants that it will, at all times during the term and at its own cost and expense,

repair or replace any and all damages to the demised premises and Common Areas when damage arises out of the use of the demised premises or Common Areas.

18. Tenant's Care and Maintenance of Demised Premises, including Patio Seating Area, etc. Tenant covenants and agrees that it will, at all times during the term hereof, keep the demised premises and all other areas used for food services by Tenant, including the patio adjoining the demised premises, and the tent, clean and free from obstruction, rubbish, dirt, snow and ice. Tenant shall place all trash, rubbish and garbage in a proper closed receptacle and shall pay all costs incident to the removal thereof. In addition, Tenant covenants and agrees that it will, at all times during the term and at its own cost and expense, clean and maintain the demised premises including, but not limited to, vacuuming, general cleaning, carpet cleaning and stain removal, interior window/glass cleaning, and furniture repair and cleaning.

19. Tent Use and Maintenance.

(a) Landlord shall provide a tent for Tenant's joint use with Landlord. However, Landlord shall be under no obligation to rebuild or repair the tent in the event substantial damage (man-made or natural) is caused thereto. The determination of what constitutes substantial damage is to be made solely by Landlord. Use of the tent shall be scheduled through Tenant. Landlord shall possess certain rights and privileges for use of the clubhouse and tent as outlined in paragraph 56.

(b) Tenant covenants that it will, at all times during the term, and at its own cost and expense, keep the interior and exterior of the tent in a good and safe condition of repair and in good working order.

(c) Tenant covenants that it will, at all times during the term and at its own cost and expense, repair or replace any and all damages to the tent when damage arises out of its use of

the tent.

20. Tenant's Failure to Repair and Remove Debris, etc. Tenant agrees that if it fails to perform any obligation placed upon it by either paragraph 16, 17, or 18 of this Lease, Landlord, in addition to other remedies provided by law and/or this Lease, may correct (or have corrected) the default at the cost and expense of Tenant.

21. Miscellaneous Covenants of Tenant. Tenant covenants that: it will comply with all Federal, State and municipal laws, ordinances and regulations relating to its business conducted in the demised premises and in the tent; it will not use the name of the golf course for any purpose other than as the address of its business to be conducted in the demised premises; it will not use, or permit to be used, the demised premises or tent for any illegal or immoral purpose; it will conduct its business in such manner as will be in keeping with the character and reputation of the golf course; it will provide a reasonable selection of quality food services and varied menu fare; it will maintain a valid Virginia Alcoholic Beverage Control license for the restaurant, tent and golf course for the duration of the Lease term; it will maintain a valid Health Department Restaurant Permit; it will comply with all reasonable rules and regulations promulgated from time-to-time by Landlord for the operation and advertising of the golf course; it will not, without the prior written consent of Landlord (which shall not be unreasonably withheld), cause or allow any advertising sign to be erected, installed, painted, displayed or maintained on the tent or on the exterior of the building of which the demised premises constitute a part; it will keep all signs installed (with the consent of Landlord) on the exterior of the building of which the demised premises constitute a part, freshly painted, in good repair and operating condition at all times; it shall not open or operate directly or indirectly a similar business within two (2) miles of the demised premises; it will not use the sidewalks of the golf

course for business purposes; it will not without the prior written consent of Landlord; (i) make any alteration to any structural portion of the demised premises or the tent, and (ii) hold a fire, bankruptcy, going-out-of-business or auction sale; and it will permit Landlord or his representatives (i) to enter the demised premises during the last twelve (12) months of the term for the purpose of exhibiting the demised premises to prospective Tenants, and (ii) to place a "For Rent" sign in a front show window during such period of time.

22. Insects and Rodents. Tenant covenants that it will, at its own expense, take such steps as shall be necessary to keep the demised premises and tent free of termites, roaches, rodents, insects and other pests and that it will save Landlord harmless from any damage caused thereby.

23. Damage by Vandals. Notwithstanding paragraph 15, if the doors, roof, window frames, glass or any part of the exterior of the demised premises or the tent are damaged by persons breaking, or attempting to break, into the demised premises or the tent, or by vandals, Tenant covenants to repair immediately, at its own expense, any and all such damage.

24. Fire Hazard. Tenant covenants that, without the prior written consent of Landlord, it will not do anything which will increase the rate of fire insurance on the building of which the demised premises constitute a part, and that if such consent is given, Tenant will pay Landlord the amount of the increase in the cost of such insurance, as and when the premiums become due.

25. Care of Roof. Tenant agrees that it will not (directly or by sufferance) place any materials or debris on the roof of the tent or on the roofs of the buildings of which the demised premises constitute a part, or cut, drive nails into, or otherwise mutilate the roofs or penetrate the roofs in anyway without prior consent of Landlord, that it will keep the roofs free of all debris, and that it will keep any gutters and downspouts free of trash, leaves and gravel.

26. Condition on Termination. Tenant covenants that it will, upon the expiration or earlier termination of this Lease, (a) deliver up to Landlord, peaceably and quietly, the demised premises in the same good condition they are now in or shall hereafter be placed, ordinary wear and tear and damage by casualty within the coverage of a standard fire insurance policy with extended coverage, excepted, and (b) remove its trade fixtures and/or signage from the demised premises (unless it is then in default hereunder, in which event it will not be permitted to effect such removal) and to repair promptly any damage caused by such removal.

27. Improvements to Become Landlord's. Tenant agrees that all additions and other improvements installed in the demised premises and in the tent by it, including, without limitation, all electric wiring, electric fixtures, air conditioning systems, show window reflectors, screens, screen doors, awnings, awning frames and floor coverings (including carpeting but excepting rugs) shall immediately become the property of Landlord, and shall not be removed by Tenant at the expiration or earlier termination of this Lease, unless Tenant is requested to do so by Landlord, in which event Tenant agrees to do so and to repair promptly any damage caused by any such removal.

28. Indemnification and Release.

(a) Tenant agrees that it will defend, indemnify and hold Landlord harmless from any and all injury, death, or damage to person or property in, on or about the demised premises and the portion of Common Areas adjoining the demised premises; and in or about the tent (arising out of Tenant's use thereof); including, without limitation, all costs, expenses, claims or suits, including reasonable legal expenses in connection with defending against any such actions, arising in connection therewith; provided, however, that this clause shall not apply to injury or damage caused by Landlord's own willful act or Landlord's failure to commence making any repair (which Landlord

has herein agreed to make) within a reasonable time after Tenant's written notice of the need, therefor. It is the intention and agreement of the parties that Landlord, except as otherwise provided herein, shall not be liable for any personal injuries or damage to the Tenant or its officers, agents, employees, invitees and all persons having business with the Tenant or to any other persons or to any occupant of any part of the demised premises and the tent and Tenant agrees to take such reasonable steps as may be necessary to safeguard its employees, agents, invitees and all persons having business with the Tenant at all times during the term of this Lease including, without limitation, during periods of repair.

(b) Tenant and all those claiming by, through or under Tenant shall store their property in, and shall occupy and use the demised premises and tent and any improvements therein and appurtenances thereto and all other portions of the golf course, solely at their own risk, and Tenant and all those claiming by, through or under Tenant hereby release Landlord, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption, arising, directly or indirectly, out of or from or on account of such occupancy and use, or resulting from any present or future condition or state of repair thereof. Landlord shall not be responsible or liable at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal injury or damage or property or business, or for business interruption, that may be occasioned by the acts, omissions or negligence of any other persons or any other tenants or occupants of any portion of the golf course. Landlord shall not be responsible at any time for any defects, latent or otherwise, in any buildings or improvements at the golf course or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible

or liable at any time for loss of life, or injury or damage to any person or to any property or business of Tenant, or those claiming by, through or under Tenant, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the demised premises and the tent or caused by or resulting from acts of God or the elements, or resulting from any defect or negligence in the occupancy, construction, operation or use of any buildings or improvements at the golf course, including the demised premises and the tent and the equipment, fixtures, machinery, appliances or apparatus therein.

29. Evidence of Insurance. Prior to the delivery of possession of the demised premises to Tenant, Tenant shall provide Landlord evidence satisfactory to Landlord (i) that fire, casualty and worker's compensation policies in amounts and in form and content satisfactory to Landlord have been issued by a company or companies satisfactory to Landlord and will be maintained throughout the course of Tenant's work and for the term of this Lease, at Tenant's cost and expense and (ii) that Tenant has complied with the comprehensive liability insurance requirements set forth in paragraph 29 hereof.

30. Tenant's Liability Insurance. Tenant will, at all times commencing on the date of delivery of possession of the demised premises to Tenant, at its own cost and expense, carry with a company or companies, satisfactory to Landlord, comprehensive liability insurance including public liability and property damage, in a form satisfactory to Landlord, on the demised premises and adjoining Common Areas and the tent, with the combined single liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, which insurance shall be written or endorsed so as to protect Landlord as an additional insured. The coverage of the policy shall specifically include all activities of the tenant, its agents, employees, invitees, and patrons at the golf course, including

its use of the tent, banquet room, adjacent patio and roving cart. The Tenant agrees that the above stated limits and coverages are minimum limits and coverages, and that Tenant shall provide such additional insurance as set forth above, in such amounts and against such risk as may be required in the Landlord's sole but reasonable judgment, to equal the amounts and types of coverages carried by prudent owners and operators of properties similar to the restaurant and grill. Tenant shall increase such limits at its discretion or upon reasonable request of Landlord but not more often than once every five (5) years and such increases shall not be in excess of generally accepted standards in the industry. The policy or policies shall contain a provision insuring Tenant against all liability which Tenant might have under the foregoing indemnity provisions. It is further understood and agreed that, for the duration of this Lease, Tenant, at its expense, shall insure all plate glass at the demised premises naming the Landlord as the loss payee on such policy. Tenant covenants that certificates of all of the insurance policies required under this Lease, and their renewal or replacement, shall be delivered to Landlord promptly without demand upon the commencement of the term of this Lease and upon each renewal of the insurance. Such policy or policies shall also provide that it shall not be canceled nor shall there be any change in the scope or amount of coverage of the policy without thirty (30) days prior written notice to Landlord. If same is not provided within ten (10) days after demand, Landlord is authorized to secure such policy from such companies as it deems appropriate and collect from Tenant in such a manner as it deems appropriate the cost of the premium.

31. Fire Insurance. Tenant covenants that it will keep the demised premises and tent insured against damage by fire with "all risk" coverage in an amount not less than eighty percent (80%) of the replacement cost thereof. Such policy or policies shall name Landlord as additional insured.

32. Damage By Fire or Other Casualty. In the event the demised premises, or any part thereof, shall be damaged by fire or other casualty during the term, Landlord agrees that it will restore the demised premises, with reasonable dispatch, to substantially the same condition they were in prior to such damage, and if the demised premises are rendered wholly or partially untenable as a result of such damage, the minimum rental payable hereunder shall be equitably abated (according to the loss of use) during the period intervening between the date of such damage and the date the demised premises are restored. Anything in the foregoing to the contrary notwithstanding, if such damage occurs during the last two (2) years of the term, and if such damage exceeds fifty percent (50%) of the then insurable value of the demised premises, either Landlord or Tenant may terminate this Lease as of the date of such damage, by giving to the other written notice of its intention so to do within thirty (30) days after the date such damage occurs. If this Lease is so terminated, the rental payable hereunder shall be abated as of the date of such damage, and Tenant shall remove all of its property from the demised premises within thirty (30) days after the notice of termination is given.

33. Mechanic's Liens. Tenant shall not permit any mechanic's, materialman's or similar lien to stand against any portion of the demised premises, the tent, or the golf course for any labor performed or material furnished in connection with any work performed or caused to be performed by Tenant. If any such lien is filed against the demised premises, the tent or the golf course, Tenant shall discharge such lien by paying the amount secured thereby or providing a bond within twenty (20) days after it was filed and if Tenant fails to do so Landlord may discharge the lien without inquiring into the validity thereof and Tenant shall promptly reimburse Landlord for any amount so expended.

34. Condemnation. In the event that the whole of the demised premises are taken by the exercise of the power of eminent domain (or sold to the holder of such power, pursuant to a threatened taking) this Lease shall terminate as of the date of such taking. In the event any portion of the demised premises, or at least twenty percent (20%) in the aggregate, of the customer parking areas of the golf course, are taken by the exercise of the power of eminent domain (or sold to the holder of such power, pursuant to a threatened taking), this Lease may, at the option of Landlord or Tenant, be terminated by written notice given to the other within sixty (60) days after such taking or sale occurs. If this Lease is not so terminated, Landlord covenants that it will, at its own expense, promptly after the lapse of said sixty (60) days, repair such damage and do such work as may be required to repair and rebuild Tenant's building and/or the Common Areas, with the view to restoring the demised premises and/or the Common Areas as nearly as may be to the condition they were in immediately prior to such taking: provided, however, that whether or not this Lease is so terminated, the minimum rental payable hereunder shall be equitably abated (according to the loss of use) from the date of such taking. Tenant shall have no right in or to the proceeds of any award made in any such condemnation.

35. No Representations by Landlord. Tenant agrees that Landlord has not made any representation, express or implied, with respect to Federal, State or municipal laws or ordinances applicable to the demised premises or the property of which the demised premises constitute a part (including, without limitation, laws or ordinances relating to zoning or fire walls), and Tenant shall not have the right to terminate this Lease, nor shall it be entitled to any abatement of rent payable hereunder or any claim for damages, in the event the demised premises cannot be used by Tenant, in whole or in part, for the purpose for which Tenant intends to use the same.

36. Assignment and Subletting. Tenant covenants that it will not assign this Lease, or sublet or permit any other person to occupy part or all of the demised premises, without Landlord's prior written consent. If Tenant is a corporation, the sale or encumbrance of a majority of its outstanding voting stock (whether in one transaction or as the result of more than one transaction) shall be deemed an assignment of this Lease. Likewise, if Tenant is a partnership, the sale or transfer of a majority of its partnership interests (whether in one transaction or as the result of more than one transaction) shall be deemed an assignment of this Lease. If, at any time during the term, Landlord has knowledge that a person, firm or corporation other than Tenant is in possession of the demised premises without the written consent of Landlord, Landlord may, at its option, at any time thereafter, by written notice to Tenant, accept and treat such person, firm or corporation in possession as the assignee or sublessee of Tenant, in which event both Tenant and such assignee or sublessee shall be obligated to observe and perform all the covenants, conditions and provisions herein contained provided, however, that nothing herein shall affect Landlord's other remedies for Tenant's default by wrongful assignment or subletting.

37. Additional Activities of Tenant. Landlord, acting through its Director of Parks, Recreation & Tourism, may authorize activities by Tenant in addition to Tenant's food service and catering activities.

38. Waiver of Subrogation. All fire insurance, extended coverage and policies relating to other casualties, carried by any party to this Lease covering the demised premises and/or the contents thereof, shall expressly waive any right on the part of the insurer against any other party to this Lease, which right, is hereby expressly waived to the extent that such waiver is not prohibited by or violative of any such policy or does not otherwise cause a loss or reduction of coverage. The

parties to this Lease agree that their policies will include such waiver clause or endorsement so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the party or parties in whose favor such waiver clause or endorsement runs pays such extra cost. If extra cost shall be chargeable therefor, each party shall advise the other of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated so to do.

39. Default and Remedies. In the event the business being conducted on the demised premises shall at any time be substantially terminated, or in the event Tenant shall default in the payment of any installment of rent herein reserved, or in the event Tenant shall default in the performance of any of the terms, covenants, conditions or provisions herein contained binding upon Tenant and such default shall not be remedied, within five (5) days after written notice thereof shall have been given by Landlord to Tenant, or in the event Tenant shall be adjudicated bankrupt or shall become insolvent or shall make a general assignment for the benefit of its creditors, or in the event a receiver shall be appointed for Tenant or a substantial part of its property and such receiver is not removed within five (5) days after appointment, Landlord shall have the right (in addition to all other rights and remedies provided by law) to reenter and take possession of the demised premises, peaceably or by force, to terminate this Lease and to remove any property therein, without liability for damage to, and without obligation to store, such property. In the event of such termination, Landlord may (but shall be under no obligation) relet the demised premises, or any part thereof, from time to time, in the name of Landlord or Tenant, without further notice, for such term or terms, on such conditions, and for such uses and purposes, as Landlord, in its discretion, may determine, and may collect and receive all rents derived therefrom and apply the same, after deduction of all appropriate expenses (including, without limitation, leasing commissions, the cost of readying the

demised premises for reletting; attorneys' fees and other costs of collection) to the payment of the rent payable hereunder, Tenant remaining liable for any failure to so relet the demised premises or any part thereof, or for any failure to collect any rent connected therewith.

40. Estoppel Certificate. Within ten (10) days after written request of Landlord, Tenant shall certify by a duly executed and acknowledged written instrument to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified by Landlord, as to the validity and force and effect of this Lease, as to the existence of any default on the part of any party thereunder, as to the existence of any offsets, counterclaims, or defenses thereto on the part of Tenant, and as to any other matters as may be reasonably requested by Landlord, all without charge and as frequently as Landlord deems necessary. Tenant's failure or refusal to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance or obligations hereunder, and (iii) that not more than one month's installment of minimum rent has been paid in advance of the due date.

41. [Intentionally left blank.]

42. Notices. Any notice herein provided or to be given to Landlord shall be deemed to be given if and when posted in United States certified mail, postage prepaid, addressed to Director of Parks, Recreation & Tourism, 700 Town Center Drive, Suite 320, Newport News, Virginia 23606, with a copy to the Director of Purchasing, 2400 Washington Avenue, Newport News, Virginia 23607-4300, and any notice herein provided for to be given to Tenant shall be deemed to be given if and when posted in United States certified mail, addressed to Tenant at the demised premises or, if Tenant be a corporation, to its registered agent. Personal delivery may be used in lieu of mailing.

43. Quiet Enjoyment. Subject to the terms, covenants and conditions set forth in this

Lease, and further subject to any mortgage or deed of trust to which this Lease is or shall be subordinate, Landlord covenants that Tenant shall have and enjoy quiet and peaceable possession of the demised premises during the term hereof.

44. Cablevision. Landlord shall arrange for a cable television line to be run to the clubhouse. Tenant shall be responsible for paying monthly service fees associated with cable television use.

45. Short Form Lease. The parties hereto agree that a short form Lease, of even date herewith, describing the demised premises, setting forth the term and referring to this Lease, shall, at the request of either party, be promptly executed and recorded (at the cost of the requesting party). This Lease may not be recorded.

46. Signs. Tenant shall have the privilege, subject to the prior written approval of Landlord of placing on the demised premises such signs as it deems necessary and proper in the conduct of its business, and in accordance with all applicable laws, ordinances and regulations, provided the Tenant pays all costs associated with the erection, maintenance and operation of any and all such signs. Tenant agrees to hold Landlord harmless from any and all losses, damages, claims, suits or actions for any damage, and insurance coverage for such signs shall be included in the general liability insurance requirements set forth in paragraph 29 hereof.

47. No Waivers. Any failure of either party hereto to insist upon strict observance of any covenant, provision or condition of this Lease in any one or more instances shall not constitute or be deemed a waiver, at that time or thereafter, of such or any other covenant, provision or condition of this Lease.

48. Pronouns. Every pronoun used in this Lease shall be construed to be of such number and gender as the context shall require.

49. Waiver of Homestead Exemption. Tenant waives the benefit of its homestead exemption as to this Lease.

50. Marginal Headings. The headings appearing in this Lease are intended only for convenience of reference, and are not to be considered in construing this instrument.

51. Successors and Assigns. This Lease and all the terms, covenants, conditions and provisions herein contained, shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and, if and when assigned in accordance with the provisions hereof, assigns.

52. Occupancy. If Tenant is unable to obtain possession of the demised premises at the beginning of the term hereof due to any act or condition such as construction delays, Landlord shall not be liable to Tenant or any other person, firm or corporation for any loss or damage resulting therefrom, and this Lease shall not be affected thereby in any way, but the rent payable hereunder shall be proportionately abated until the demised premises are available for occupancy by Tenant.

53. Broker's Commission. Tenant represents and warrants that it has incurred no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and to the extent permitted by law, each of the parties agrees to indemnify the other against and hold it harmless from all liabilities arising from any such claim (including, without limitation, the reasonable cost of attorney's fees in connection therewith).

54. Hazardous Materials

(a) As used herein, the term "Hazardous Material" shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property, including all of those materials and

substances designated as hazardous or toxic by the city in which the premises are located, the U. S. Environmental Protection Agency, the Consumer Product Safety Commission, the Food and Drug Administration, or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

(b) Tenant agrees not to introduce any Hazardous Material in, on or adjacent to the demised premises or the tent without (i) providing Landlord with thirty (30) days prior written notice of the exact amount, nature, and manner of such Hazardous Material, and (ii) complying with all applicable federal, state and local laws, rules, regulations, policies and authorities relating to the storage, use or disposal, and clean-up of Hazardous Materials, including, but not limited to, the obtaining of proper permits.

(c) Tenant shall immediately notify Landlord of any inquiry, test, investigation, or enforcement proceeding by or against Landlord or the demised premises or the tent concerning a Hazardous Material. Tenant acknowledges that Landlord, as the owner of the demised premises and tent, shall have the right, at its election, in its own name or as Landlord's agent, to negotiate, defend, approve, and appeal, at Tenant's expense, any action taken or order issued with regard to a Hazardous Material by an applicable governmental authority.

(d) If Tenant's storage, use or disposal of any Hazardous Material in, on or adjacent to the demised premises or tent results in any contamination of the demised premises or tent, the soil or surface or groundwater (i) requiring remediation under federal, state or local statutes, ordinances, regulations or policies, or (ii) at levels which are unacceptable to Landlord, in Landlord's reasonable judgement, Tenant agrees to clean-up the contamination. Tenant further agrees to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action,

costs, fees, including attorneys' fees and costs, arising out of or in connection with any clean-up work, inquiry or enforcement proceeding in connection therewith, and any Hazardous Materials currently or hereafter used, stored or disposed of by Tenant or its agents, employees, contractors or invitees on or about the demised premises and tent .

(e) Notwithstanding any other right of entry granted to Landlord under this Lease, Landlord shall have the right to enter the demised premises or to have consultants enter the demised premises through the term of this Lease for the purpose of determining: (1) whether the premises are in conformity with federal, state and local statutes, regulations, ordinances, and policies, including those pertaining to the environmental condition of the premises, (2) whether Tenant has complied with this paragraph 54, and (3) the corrective measures, if any, required of Tenant to ensure the safe use, storage and disposal of Hazardous Materials, or to remove Hazardous Materials. Tenant agrees to provide access and reasonable assistance for such inspection. Such inspections may include, but are not limited to, entering the demised premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples. Landlord shall not be limited in the number of such inspections during the term of this Lease. Tenant shall reimburse Landlord for the cost of such inspections within ten (10) days of receipt of a written statement therefore. If such consultants determine that the demised premises or tent are contaminated with Hazardous Materials, Tenant shall, in a timely manner, at its expense, remove such Hazardous Materials or otherwise comply with the recommendations of such consultants to the reasonable satisfaction of Landlord and any applicable governmental agencies. The right granted to Landlord herein to inspect the demised premises shall not create a duty on Landlord's part to inspect the demised premises, or liability of Landlord for Tenant's use, storage or disposal of Hazardous Materials, it being understood that

Tenant shall be solely responsible for all liability in connection therewith.

(f) Tenant shall surrender the demised premises and tent to Landlord upon the expiration or earlier termination of this Lease free of Hazardous Materials and in a condition which complies with all governmental statutes, ordinances, regulations and policies, recommendations of consultants hired by Landlord, and such other reasonable requirements as may be imposed by Landlord.

(g) Tenant's obligations under this paragraph 54 shall survive termination of this Lease.

55. Entire Agreement, Etc. This Lease and the Exhibits, Riders and/or Addenda, if any, attached and signed by the parties, set forth the entire agreement between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. The City Manager has authority on behalf of the Landlord to agree to and sign any amendment. If any provision contained in a Rider or Addenda is consistent with a provision of this Lease, the provision contained in said Rider or Addenda shall supersede the Lease provision. This Lease shall be construed under the laws of the Commonwealth of Virginia and any litigation regarding any provision of this Lease shall be maintained in the Circuit Court for the City of Newport News, Virginia.

56. Events Sponsored by Landlord. Landlord reserves the right to hold "pot luck" activities and other similar events, and to utilize a third party to cater City sponsored events, including, but not limited to, the golf tournaments, held at the clubhouse (on either or both floors) and the tent and on the demised premises. Landlord shall be responsible for set-up and clean-up

fees, when Tenant performs such work.

57. Miscellaneous. Landlord has the right to contact, survey, and provide questionnaires to Tenant's customers and guests in order to assess the quality of services provided by Tenant. Upon request, Landlord will provide the responses thereto to Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date and year first above written.

[Signature Pages Follow]

LANDLORD:

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
City Manager

ATTEST:

City Clerk

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____ and _____, as City Manager and City Clerk, respectively, of the City of Newport News, Virginia.

Notary Public

My commission expires: _____
Registration No. _____

APPROVED AS TO FORM:

City Attorney

TENANT:

VIRGINIA HOSPITALITY SERVICES, INC.

By: _____
President/Vice President

COMMONWEALTH OF VIRGINIA
CITY OF NEWPORT NEWS, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____ as _____, of Virginia Hospitality Services, Inc..

Notary Public

My commission expires: _____
Registration No. _____

sdm14638