

**ORDINANCE NO. 7325-16**

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, THAT CERTAIN NEWPORT NEWS SEAFOOD INDUSTRIAL PARK LEASE OF OFFICE SPACE LOCATED AT 34 JEFFERSON AVENUE, NEWPORT NEWS, VIRGINIA BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND DAVIS BOAT WORKS, INC., DATED THE 22<sup>ND</sup> DAY OF NOVEMBER, 2016.

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

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 Newport News Seafood Industrial Park Lease of Office Space Located at 34 Jefferson Avenue, Newport News, Virginia by and between the City of Newport News, Virginia, and Davis Boat Works, Inc., dated the 22<sup>nd</sup> day of November, 2016.

2. That a copy of the said Lease is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON NOVEMBER 22, 2016

Mabel Washington Jenkins, MMC  
City Clerk

McKinley L. Price, DDS  
Mayor

A true copy, teste:

City Clerk

**NEWPORT NEWS SEAFOOD INDUSTRIAL PARK**  
**LEASE OF OFFICE SPACE LOCATED AT**  
**34 JEFFERSON AVENUE, NEWPORT NEWS, VIRGINIA**

**THIS COMMERCIAL LEASE**, made this 22<sup>nd</sup> day of November, 2016, by and between the **CITY OF NEWPORT NEWS, VIRGINIA** a Municipal Corporation in the Commonwealth of Virginia, hereinafter called "Lessor," party of the first part, and **DAVIS BOAT WORKS, INC.**, hereinafter called "Lessee," party of the second part.

**WITNESSETH:** That in consideration of the rent, provisos and agreements herein contained, which Lessee, its successors and assigns, expressly agree to be paid, done and performed; Lessor doth grant and lease unto Lessee the following described property, to-wit:

Four thousand forty nine (4,049) square feet of office space located at 34 Jefferson Avenue, Newport News Seafood Industrial Park (SIP), plus forty (40) reserved parking spaces in the parking lot in front of said building located in the City of Newport News, Virginia, hereinafter referred to as the "Leased Premises".

The initial term of this lease shall be for a period of one (1) year to commence on January 1, 2017, and terminate on December 31, 2017, unless sooner terminated as a result of a breach of the terms or conditions of this lease by Lessee, or by abandonment of the Leased Premises by Lessee, or as otherwise provided herein. At the termination of the initial term of this lease, if all the terms and conditions of this lease have been complied with by Lessee, Lessee may renew this lease as provided herein for up to four (4) additional one-year terms at the existing rental rate. Lessee shall, no less than ninety (90) days prior to the termination of any one of the terms provided for herein, give notice in writing to Lessor's City Manager of its request to renew, otherwise, Lessee shall vacate the Leased Premises by the end of the said term.

Lessee shall pay to Lessor for the use and occupancy of the Leased Premises pursuant to this lease an initial annual rental equal to TEN DOLLARS AND NINETY-FIVE CENTS (\$10.95) per square foot multiplied by the total 4,049 square foot area of the Leased Premises, for a total annual rental of FORTY-FOUR THOUSAND THREE HUNDRED THIRTY-SIX AND 52/100 DOLLARS (\$44,336.52).

The Annual rental payments are due and payable in monthly installments, in advance, on or before the fifth (5th) day of each month. Failure to pay rent by the fifth (5th) day of each month shall subject Lessee to a monthly late payment charge of TEN PERCENT (10%) of the monthly rent. This late charge shall be compounded and added to the outstanding balance after the fifth (5th) day of each following month until the total payment and late charges are paid to Lessor. Failure to timely remit such rental payments to Lessor shall also be subject to paragraph 9 of this lease. On any matter pertaining to rental collection, Lessee agrees to pay all court costs and any other expenses of collection, as well as reasonable attorney's fees.

It is further covenanted and agreed between the parties hereto as follows:

1. The use of the Leased Premises shall be subject to all Federal, State and local laws, as well as all regulations issued pursuant thereto.
2. Neither the whole or any portion of the said Leased Premises shall be sublet or assigned for any purpose without the prior consent of Lessor in writing. In the event the Lessor agrees to allow Lessee to sublet or assign the whole or any portion of the Leased Premises, Lessor reserves the right to renegotiate the terms of the original lease and to establish a new lease with the sublessee or assignee. In the event that Lessor agrees to allow Lessee to sublet or assign the whole or any portion of the Leased Premises, such assignee shall have no greater rights and shall be subject

to the same terms and conditions as Lessee. The total rental paid by the sublessee or assignee to Lessee shall not exceed the square foot rental paid by Lessee to Lessor, as it is the intent of Lessor not to allow Lessee to profit from the subleasing the Leased Premises.

3. Lessee agrees that this lease is non-transferable and non-assignable to any third person or entity. Any such transfer or assignment shall constitute cause for immediate termination of this lease at the sole option of Lessor.

4. Lessor agrees to maintain and keep in good repair the Leased Premises, except that Lessee agrees to repair any damage to the Leased Premises due to the negligence of Lessee. Lessee also agrees to notify Lessor of any damages or defects in the Leased Premises as soon as is practicably possible after their discovery. Included in the maintenance and good repair are all heating/air conditioning units, the electrical stove and oven, the hot water heater and the installed security system. Lessee shall maintain all equipment provided and owned by Lessee. Normal janitorial services shall be provided by Lessor and shall include one annual cleaning of the carpeting existing in place in the Leased Premises at the beginning of the initial term of this lease.

5. No materials or supplies shall be stored in any area on the property except in an enclosed building or behind a visual barrier approved by Lessor.

6. Lessor reserves the right of prior approval for installation of any security fence on the Leased Premises.

7. Mooring of barges, boats, vessels or any other floating structure inside the Newport News Seafood Industrial Park Jetty is not provided for in this lease. Jetty utilization is covered by separate agreements and regulations.

8. No litter or debris shall be allowed to accumulate in open spaces on or within the Leased Premises.

9. It is further covenanted and agreed by the parties hereto that in the case of default or breach of any of the covenants and agreements herein contained to be performed by Lessee, as herein set out to be observed, kept and performed by it, then Lessor reserves the right unto itself to cancel this lease, and it shall have the right, at any time afterward to enter into and upon the said Leased Premises, or any part thereof, and the same again to have, repossess and enjoy as of its former estate. Except for failure to timely remit rental payments, prior to the exercise of its option to cancel this lease agreement pursuant to this paragraph, Lessor agrees to give notice of such default or breach to Lessee. In the event Lessee cures the default or breach within a reasonable time, no basis for action pursuant to this paragraph will lie. The time period within which Lessee must cure the default or breach shall in no instance exceed sixty (60) days, except that lease payments must be made by the 5th day of each month, without notice, and failure to do so is an event of substantial default. Repeated defaults, breaches and violations of law or regulations by Lessee will not be tolerated, and Lessee agrees that the notice-to-cure provision of this paragraph may be, after thirty (30) days written notice, unilaterally withdrawn by the Newport News, Virginia, City Council if it finds that the provision has been abused. In the event this lease is canceled pursuant to this paragraph, all unpaid rents will become due and payable immediately upon cancellation.

10. It is understood and agreed that Lessee will indemnify, defend, protect and save harmless the City of Newport News, Virginia, from and against all losses and claims of physical damages to property, and bodily injury or death to any person or persons, which may arise out of or be caused by the use and maintenance of the Leased Premises by Lessee or any claim as aforesaid

growing out of Lessee's business or businesses referred to herein. In addition, Lessee agrees to obtain, and continuously keep in force, an insurance policy with a company qualified to do business in the Commonwealth of Virginia. The policy shall at least provide for the following coverage:

- a. Bodily injury or death to any person or persons      \$1,000,000.00
- b. Physical damage to property      \$500,000.00

Said policy shall provide that the City of Newport News, Virginia is added as an additional insured under the terms of the policy and shall first be approved by the Newport News, Virginia, Office of Self-insurance. Failure to keep the required insurance coverage continuously in force constitutes an event of substantial default of this lease.

11. Lessor shall pay the water, sewer and security bills for the building. Lessee shall pay its own electric bill, the usage being measured by separate meter, and its own telephone bill. Lessee agrees to reimburse Lessor a portion of the water and sewer bills based upon the percent of total square feet of the building leased by Lessee which is calculated to be SEVENTY-SIX PERCENT (76%).

12. Lessee shall provide a sufficient number and size of solid waste disposal containers so as to accommodate Lessee's waste generated by the use of the Leased Premises and dispose of solid waste on a weekly basis at its own expense.

13. It is mutually agreed that Lessor has the right to enter onto the property during reasonable business hours for the purpose of insuring that Lessee complies with applicable laws, as well as the terms of this lease.

14. The Leased Premises shall be used only for general office use.

15. Lessee agrees to pay to Lessor as rent, in addition to the fixed rental herein required, any and all sums which may become due by reason of the failure of Lessee to comply with all the covenants of this Lease, and any and all damages, costs and expenses which Lessor may suffer or incur by reason of any default of Lessee or failure on Lessee's part to comply with the covenants of this Lease, as well as the cost of repairing any and all damages to the Leased Premises or the building of which the Leased Premises are a part caused by any negligence of Lessee, its agents and invitees.

16. Lessee will give to Lessor prompt written notice of any defect, accident, fire or damage occurring on or to the Leased Premises.

17. Lessee will peacefully deliver up and surrender possession of the Leased Premises to Lessor at or prior to the expiration or earlier termination of this Lease, or any renewal thereof, in the same good order and condition, normal wear and tear excepted, in which Lessee has herein agreed to keep the same during the continuance of this Lease. Lessee will at or prior to the expiration or earlier termination of this Lease or any renewal thereof remove all of its property from the Leased Premises so that Lessor may again have and repossess the same not later than noon on the day on which this Lease or the renewal thereof shall terminate.

18. Lessee shall not do or suffer to be done any act, or employ or allow any person to do any act, as a result of which the fire insurance or any other insurance now in force or hereafter to be placed on the Leased Premises, or any part thereof, or the building of which the Leased Premises are a part, shall become void or suspended, or whereby the same shall be rated as a more hazardous risk than at the date of execution of this Lease. Lessee shall not carry or have any benzine

or explosive matter of any kind on and about the Leased Premises, except in quantities and containers approved in advance by the Port Development Administrator.

19. At any time after notice properly given by either party to the other of an intention to terminate this Lease, Lessor may conduct persons who may be interested in leasing the Leased Premises in and about the same.

20. In the event that the Leased Premises are totally destroyed or rendered unfit for occupancy or are so damaged by fire or other casualty, not occurring through fault or negligence of Lessee or of those employed by or acting for Lessee, that the same cannot be repaired and restored within a time the parties shall by mutual agreement deem reasonable, this Lease shall absolutely cease and terminate as of the date of occurrence of said destruction or damage, and the rental payments shall thereafter abate for the balance of the term. If damage to the Leased Premises is only partial, and such that the Leased Premises can be repaired and restored to their former condition within a time which the parties by mutual agreement deem reasonable, Lessor may, at its sole option, repair and restore the same with reasonable promptness. The rental payments shall be apportioned and suspended during the time Lessor is in possession for the purpose of such repair and restoration, taking into account the proportion of the Leased Premises rendered untenable and the duration of Lessor's possession.

21. Lessor shall not be liable for any loss or damage howsoever occurring to the contents of the Leased Premises.

22. Lessor shall not be liable for any damages, compensation or claim by reason of inconvenience, annoyance, injury or loss resulting from the termination of this Lease by reason of the destruction of the Leased Premises, from the making of repairs, alterations, additions or

improvements to any portion of the Leased Premises, the building or the facilities thereof, from any of the services or facilities supplied by Lessor, or from the leaking of rain, snow, water, steam or gas into, in or about the Leased Premises or the building of which the Leased Premises is a part.

23. It is hereby covenanted and agreed, any law, usage or custom to the contrary notwithstanding, that Lessor shall have the right at all times to enforce the covenants and provisions of this Lease in strict accordance with the terms hereof, notwithstanding any conduct on the part of Lessor in refraining from so doing at any time or times; and, further, that the failure of Lessor at any time or times to enforce its rights under said covenants and provisions strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to the specific terms, conditions and covenants of this Lease, or as having in any way or manner modified the same.

24. It is expressly understood and agreed by and between the parties hereto that this lease sets forth all the promises, agreements, conditions and understandings between Lessor and Lessee relative to the Leased Premises, and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. It is further understood and agreed that, except as herein otherwise provided, no subsequent alterations, amendment, change or addition to this lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by both parties.

25. It is expressly understood and agreed by and between the parties hereto that the indoor portion of the Leased Premises is a non-smoking building in its entirety, thus smoking is prohibited therein.

26. Pre-Existing Hazardous Materials: Lessor acknowledges that polychlorinated

biphenyls (“PCBs”), petroleum, and contamination resulting therefrom have been identified as being present in the Newport News Seafood Industrial Park. Lessor agrees that any petroleum and PCBs that existed on the premises prior to Lessee’s tenancy (the “Pre-Existing Hazardous Materials”) are neither due to, nor the result of, any act or omission on the part of Lessee. Lessor agrees that Lessee shall have no liability or obligation whatsoever to Lessor with respect to the Pre-Existing Hazardous Materials that may be located on the Leased Premises, or the cleanup and remediation thereof. Landlord agrees that any remediation of the Pre-Existing Hazardous Materials undertaken by Landlord during the Term of this Lease or any Renewal term shall be scheduled so as not to unreasonably impair or impede Lessee’s business operations nor unreasonably interfere with its right to quiet enjoyment of the Leased Premises.

**IN WITNESS WHEREOF**, the City of Newport News, Virginia has caused these presents to be executed by its City Manager, with its seal hereto affixed, duly attested by its City Clerk, both in that behalf first duly authorized; and Davis Boat Works, Inc., has caused these presents to be executed by \_\_\_\_\_ in that behalf having been duly authorized.

LESSOR: CITY OF NEWPORT NEWS, VIRGINIA

By: \_\_\_\_\_

James M. Bourey  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

Reviewed by:

Approved as to form:

\_\_\_\_\_  
Senior Assistant City Attorney

\_\_\_\_\_  
City Attorney

LESSEE: DAVIS BOAT WORKS, INC.

By: \_\_\_\_\_

President

COMMONWEALTH OF VIRGINIA

CITY OF NEWPORT NEWS, to wit:

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that James M. Bourey and Mabel Washington Jenkins, whose names appear as City Manager and City Clerk respectively, of the CITY OF NEWPORT NEWS, VIRGINIA, acknowledged the foregoing Lease before me in my jurisdiction aforesaid.

Given under my hand this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_ to wit:

The undersigned Notary Public in and for the jurisdiction aforesaid hereby certifies that \_\_\_\_\_, whose name appears as President of Davis Boat Works, Inc., acknowledged the foregoing Lease before me on this date in my jurisdiction aforesaid.

Given under my hand this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Registration No.: \_\_\_\_\_