

## DEED OF LEASE

This Deed of Lease (the "Lease") is dated the 2nd day of August, 2016, between the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "County"), and the JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the "EDA").

## WITNESSETH

1. **Premises.** For and in consideration of the terms, conditions, covenants, promises and agreements herein made, the County leases to the EDA the following real property, together with the right of ingress and egress, in the County of James City, Virginia, subject, however, to all easements, restrictions and covenants of record. The property is more particularly described as:

A portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as Tax Parcel Number 4640100012 (in its entirety referred to as the "Marina"), as more particularly described on Exhibit A, which is attached to and made a part of this Lease (the leased portions collectively referred to as the "Premises"). The Premises leased to EDA shall include an exclusive interest in the top floor of the building shown in red on Exhibit A (the leased floor referred to as, the "Building"), an exclusive interest in an area shown in blue on Exhibit A (the "Open Area"), a non-exclusive interest in a shared area that provides access and parking as shown in green on Exhibit A (the "Shared Area"), and all rights appurtenant to the Premises, including, without limitation, stormwater drainage rights, and ingress and egress easements which are insurable under a leasehold title insurance policy.

2. **Term.** The term of this Lease shall be five (5) years (the "Initial Term") commencing on the date of full execution of a sublease between the EDA and a subtenant (the "Commencement Date"). In order for this Lease to have effect, the Commencement Date must occur within three (3) months of the execution of this Lease. If the Commencement Date does not occur within such three (3) month period, this Lease shall automatically terminate and neither the County nor the EDA shall have any obligation to fulfil any condition of this Lease. The EDA shall provide written notice of the Commencement Date to the County. The Initial Term shall end on the fifth (5<sup>th</sup>) anniversary of the Commencement Date (the "Expiration Date"). Provided the EDA is not in default, this Lease will automatically renew for up to three (3) additional terms of five (5) years each (each a "Renewal Term"). The Initial Term in conjunction with any Renewal Term of this Lease is referred to as the "Term." The conclusion of the Term of this Lease is referred to as the "Final Expiration Date."

3. **Rent.** The EDA shall pay the County the sum of One Dollar (\$1.00) per annum. Rent shall be due on the Commencement Date and each anniversary thereof. If the EDA subleases all or a portion of the Premises to one or more subtenants, then after the Expiration Date, and during any Renewal Term, the EDA shall remit to the County one half (1/2) of the rent paid to the EDA by any subtenant(s).

4. **Use of Premises.** The EDA covenants to sublease the Premises only for Economic Development opportunities which will enhance the Marina and for no other purpose, subject to

and in accordance with all applicable zoning and other governmental regulations. The EDA will only use the Shared Area in a manner that does not interfere with the access, use and enjoyment of the Shared Area by the County or other tenants and licensees.

5. Quiet Enjoyment. Within thirty (30) days of receiving notice of the Commencement Date, the County shall cause any other tenants or licensees on the Premises to vacate, unless otherwise agreed to in writing by the EDA. So long as the EDA observes and keeps all the covenants, agreements, and conditions of this Lease, the County covenants that the EDA shall have quiet and peaceful use and enjoyment of the Premises throughout the Term, subject to the exceptions, reservations, and conditions of this Lease.

6. Assignment and Subletting. The EDA may sublease the Premises or any portion thereof for Economic Development opportunities which will enhance the Marina. The subtenant shall not interfere with the use and enjoyment of the Shared Area by the County or other tenants and licensees. The EDA shall give the County written notice of any sublease, which notice shall include a copy of any sublease agreement and contact information for the subtenant.

7. Access by the County. The County and its representatives may enter the Premises at any time to make emergency repairs, preserve the Premises pursuant to this Lease, or to abate any nuisance, hazard, or unlawful conditions. Except in the case of an emergency, the County shall give the EDA and any subtenant reasonable advance notice of not less than twenty-four (24) hours before seeking access to the Premises. The County agrees to use reasonable efforts to minimize interference with the operations of the EDA or any subtenant on the Premises.

8. Insurance. Beginning on the Commencement Date and continuing during the Term of this Lease, the County, at the County's expense, shall keep in force with an insurance company authorized to transact business in Virginia an insurance policy with fire and extended coverage, and flood insurance on the Building written at the full replacement cost and agreed amount endorsements (with a deductible of not more than \$5,000) and providing rent or income loss coverage for a period of up to twelve (12) months. The County shall maintain, with respect to the Premises, commercial liability and property damage insurance endorsed to cover personal injury. The coverage for each occurrence shall be at least \$1,000,000.00, with a general aggregate limit of at least \$2,000,000.00. Each liability policy shall, without limitation, name the EDA as an additional insured.

The EDA shall ensure that any subtenant obtain and maintain fire and extended coverage, and flood insurance on the contents of the Premises, including any improvements or alterations made by the subtenant in an amount sufficient so that no co-insurance penalty shall be invoked in case of loss. The EDA shall ensure that any subtenant obtain and maintain at all times during the Term, for the protection of the County and the EDA, Liability Insurance (Comprehensive General Liability or Commercial General Liability) including Contractual Liability Insurance, with a combined personal injury and property damage limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence and not less than Two Million Dollars (\$2,000,000.00) in the aggregate, insuring against all liability of the subtenant and its representatives arising out of and in connection with subtenant's use or occupancy of the Premises. The County and the EDA and their officers, agents, and employees shall be named as additional insureds on any insurance policy maintained by a subtenant of the EDA.

9. Compliance with Laws.

(a) The County agrees that the Building and other improvements at the Premises shall be delivered on the Commencement Date in compliance with all applicable building codes and other federal, state and municipal laws, ordinances and regulations (collectively "Laws"), for their current use, if any. The EDA shall at all times comply with all Laws relating to its use and/or occupancy of the Premises, and, subsequent to the Commencement Date, the EDA shall make, or cause its subtenant(s) to make, such repairs, replacements, improvements and installations as may be necessary to comply with Laws if required as a result of the EDA's or its subtenants' use of the Premises. The EDA shall have no obligation to make any improvements or repairs to bring the Premises or Building into compliance with Laws unless required by a change initiated by the EDA after the Commencement Date.

(b) The County represents and warrants to the EDA that, to the best of its knowledge, the Premises is in compliance with all applicable Laws relating to Hazardous Materials and that the Premises is free of any and all such Hazardous Materials. The EDA agrees to comply, and to cause all its employees, agents, contractors, invitees, customers and any other persons occupying or present on the Premises with the consent of the EDA to comply, with all Laws relating to Hazardous Materials with respect to any use by the EDA of such Hazardous Materials. Notwithstanding the foregoing or any other provision of this Lease to the contrary, the EDA shall not be responsible or liable for any Hazardous Materials at the Premises as of the Commencement Date. "Hazardous Materials" are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. § 1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6903), or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601). The foregoing covenants and agreements of the County and the EDA shall survive the Term, and the County and the EDA shall immediately notify the other party of their receipt of any report, citation, notice or other writing by, to or from any governmental or quasi-governmental authority and power to regulate or oversee any of the foregoing activities or in any way related to or connected with Hazardous Materials on the Premises.

(c) The EDA shall be responsible for compliance with, or cause its subtenant(s) to comply with, the Americans with Disabilities Act, as it now exists and as it may hereafter be amended (the "ADA") with respect to the interior, non-structural portions of the Building, any construction, renovations or alterations performed by the EDA or its subtenants and any compliance required due to the EDA's or its subtenants' specific use or the specific employees of the EDA or its subtenants. The EDA shall not be responsible to the County for complying with any laws or regulations except to the extent a violation of such regulation or law first occurred by act or omission of the EDA or the EDA's agents or invitees following the Commencement Date.

10. Maintenance, Repairs, Utilities and Other Costs.

(a) Utilities: Following the Commencement Date, all utilities serving the Building shall be the responsibility of the EDA or any subtenant and shall be separately metered in the EDA or subtenant's name. The cost of separately metering the Building shall be the responsibility of the EDA or its subtenant.

(b) Shared Area: The County shall be responsible for the maintenance, improvement, or repair of the Shared Area at all times.

(c) Building: The EDA or its subtenant shall be responsible for the routine maintenance of all aspects of the Building, including usual upkeep, paint, janitorial service, light bulbs, etc. The County shall be responsible for the repair or replacement of all other aspects of the Building, excepting only the electric heat pump/air conditioning unit, which the EDA accepts "AS IS." The County shall not repair or replace the existing electric heat pump/air conditioning unit in the Building. The County shall not be responsible for making any improvements to the Building, or for the maintenance, repair, or replacement of any improvements made by the EDA or its subtenant pursuant to Section 11 of this Lease. The County shall not allow the areas of the Marina buildings not leased to the EDA to fall into disrepair. Notwithstanding anything herein to the contrary, the County shall not be obligated to make any repairs in excess of \$10,000.00 in any fiscal year. Should the Building need repairs that exceed \$10,000.00 in any fiscal year, the County Administrator may, in his sole discretion, authorize repairs that exceed that amount. Alternatively, the County Administrator may call a meeting with the Chair of the EDA to negotiate in good faith to determine (1) if the repairs are absolutely necessary and (2) if they are, what amount of the cost should be apportioned between the County and the EDA. If the County Administrator and the Chair cannot come to an agreement, the County Administrator may: (1) deny to fund such repairs, or (2) fund only a portion of the repairs requested.

(d) Open Area: The EDA or its subtenant shall be responsible for the maintenance, repair, or improvement of the Open Area.

The County shall not be liable (and shall assess the costs thereof to the EDA) when any repair or replacement of the Premises is made necessary by the negligent or willful acts or omission of the EDA, its subtenant, or the EDA or subtenant's agents, invitees, or employees. Any maintenance, repair, or replacement of the Premises not required to be made or incurred by the EDA pursuant to this Agreement shall be paid and performed by the County.

11. Improvements.

(a) The EDA or its subtenant may make interior, non-structural alterations, additions, or improvements ("Improvements") to the Building under the following conditions:

(i) Internal Improvements: The EDA or its subtenant may make non-structural Improvements to the interior of the Building without first obtaining the written consent of the County.

(ii) External Improvements: The EDA or its subtenant may make non-structural Improvements to the exterior of the Building without first obtaining the written consent of the County so long as such Improvements are in compliance with

the County-approved site plan and that the color of the Building or any fixture thereto is of a neutral or muted earth tone color that complements the Marina. Any disagreement shall be handled per Section 11(c)(iii) of the Lease. The EDA or its subtenant may request written approval for any external Improvement and the County shall use reasonable efforts to make a determination approving, conditionally approving, or denying the external Improvement within five (5) business days after receipt thereof.

(iii) Structural Improvements: The EDA or its subtenant may only make structural Improvements to the interior or exterior of the Building after obtaining the written consent of the County. If the EDA or its subtenant wishes to undertake structural Improvements to the Building, the EDA or its subtenant shall give the County a written preliminary description and construction drawings of any such proposed Improvement. The County agrees to use reasonable efforts to make a determination approving, conditionally approving, or denying the structural Improvement within ten (10) business days after receipt thereof.

(iv) The time limits set forth in subparagraphs (ii) and (iii) above are intended only to apply to conceptual approvals granted by County Administration and shall not modify any otherwise applicable approval procedure, including, but not limited to, Building Safety and Permits, Community Development, Fire and Life Safety, and the Health Department.

Upon completion of any Building Improvement, the EDA or its subtenant shall provide the County with a set of as-built construction plans for the County's review and approval. The EDA or its subtenant shall bear the cost of all Building Improvements made pursuant hereto and shall bear full responsibility for the maintenance and repair thereof.

(b) The County reserves the right to erect, use, connect to, maintain and repair pipes, ducts, conduits, cable, plumbing, vents and wires in, to and through the Premises, but not the Building, to the extent that the County deems necessary or appropriate for the proper operation and maintenance of the Marina (including the servicing of other tenants and licensees in the Marina) and the right at all times to transmit water, heat, air-conditioning and electric current through such pipes, ducts, conduits, cables, plumbing, vents and wires. The County agrees to not unreasonably interfere with the business of the EDA or any subtenant on the Premises in exercising its ability to ensure the proper operation and maintenance of the Marina.

(c) The EDA or its subtenant may construct a new building in the Open Area (the "Facility") subject to the following conditions:

(i) The EDA or its subtenant shall use due diligence and act in good faith to agree with the County Administrator, or his designee, on the final master site plan and design development plans for the Facility (the "Design"). Such plans shall include a construction schedule. The Design shall define the exact improvements that the EDA or its subtenant covenants to construct on the Open Area.

(ii) The County Administrator, or his designee, shall approve the Design in order to ensure consistency and maintain the quality and character of the Marina. Such approvals shall not be unreasonably withheld. Any proposed additions or changes to the Design prior to construction shall be approved in like fashion. No construction shall be undertaken until the Design has been approved in accordance with these provisions.

(iii) In case of disagreement with respect to material compliance with the Design, the County Administrator, or his designee, shall advise the EDA and any subtenant in writing of the material deficiency claimed. If the claimed deficiency is not cured by the EDA or its subtenant within thirty (30) days (or such longer period as may be reasonably necessary provided the EDA or its subtenant has begun to commence curing within thirty (30) days and diligently pursues the completion of the curing thereafter), the EDA shall be deemed in material default hereunder and the County may take whatever action it is entitled to as provided by law or equity.

(iv) Construction of the Facility shall be performed by a contractor selected by the EDA or its subtenant. The EDA or its subtenant shall not discriminate against any prospective contractor based upon race, sex, religion, or national origin.

(v) The EDA or its subtenant may make Improvements to the Facility under the following conditions:

1) Internal Improvements: The EDA or its subtenant may make non-structural Improvements to the interior of the Facility without first obtaining the written consent of the County.

2) External Improvements: The EDA or its subtenant may make non-structural Improvements to the exterior of the Facility without first obtaining the written consent of the County so long as such Improvements are consistent with the Design and are of a neutral or muted earth tone color that compliments the Marina. Any disagreement shall be handled per Section 11(c)(iii) of the Lease. The EDA or its subtenant may request written approval for any external Improvement and the County shall use reasonable efforts to make a determination approving, conditionally approving, or denying the external Improvement within five (5) business days after receipt thereof.

3) Structural Improvements: The EDA or its subtenant may only make structural Improvements to the interior or exterior of the Facility after obtaining the written consent of the County. If the EDA or its subtenant wishes to undertake structural Improvements to the Facility, the EDA or its subtenant shall give the County a written preliminary description and construction drawings of any such proposed Improvement. The County agrees to use reasonable

efforts to make a determination approving, conditionally approving, or denying the structural Improvement within ten (10) business days after receipt thereof.

4) The time limits set forth in subparagraphs (2) and (3) above are intended only to apply to conceptual approvals granted by County Administration and shall not modify any otherwise applicable approval procedure, including, but not limited to, Building Safety and Permits, Community Development, Fire and Life Safety, and the Health Department.

Upon completion of any Facility Improvement, the EDA or its subtenant shall provide the County with a set of as-built construction plans for the County's review and approval. The EDA or its subtenant shall bear the cost of all Improvements made pursuant hereto and shall bear full responsibility for the maintenance and repair thereof.

(vi) During the construction of the Facility, the EDA or its subtenant shall cooperate and consult with the County Administrator, or his designee, and shall allow them to inspect the Open Area as they deem appropriate.

(vii) The EDA or its subtenant shall construct the Facility in a good workmanlike manner that is consistent with and in accordance with the plans and specifications approved by the County. Once constructed, the EDA or its subtenant shall maintain and operate the Facility at its sole expense in good order, in a sanitary, safe, and high-quality condition. All maintenance shall be performed in a professional manner.

(viii) Throughout the Term, the EDA or its subtenant shall, without any cost or expense to the County: i) take good care of and keep in good order and repair, or cause the same to be done, inside and out, the Facility, all alterations, renovations, replacements, substitutions, changes and additions therein or thereto and the roofs and foundations thereof, all fixtures and appurtenances therein and thereto, all machinery and equipment therein, including without limitation, all machinery, pipes, plumbing, wiring, gas, steam and electrical fittings, sidewalks, water, sewer and gas connections, heating equipment, air conditioning equipment and machinery, and all other fixtures, machinery and equipment installed in or connected with the Facility or used in their operations; ii) make all repairs inside and outside, ordinary and extraordinary, structural or otherwise, necessary to preserve the Facility in good order and condition; iii) promptly pay or cause the payment of the expense of such repairs; iv) not cause or permit any waste to the Facility or Open Area; v) on the leased Premises, keep the sidewalks, curbs and parking areas in good repair and reasonably free from snow, ice, dirt and rubbish; vi) give prompt written notice to the County of any fire or casualty that may occur; vii) permit the County to enter the Facility and Open Area after appropriate notice

as provided in Section 7 to the EDA or its subtenant under the circumstances (which may be contemporaneous with the County's entry in case of an emergency) to make repairs to the Facility, to restore the same after damage or destruction by fire or other casualty or by partial condemnation, to complete repairs commenced but not completed by the EDA or its subtenant, to repair, at or before the end of the Term, all injury done by the installation or removal of the EDA or its subtenant's equipment, machinery, furniture, trade fixtures and property, and/or to comply with all orders and requirements of any governmental authority applicable to the Facility and to any occupation thereof, where, in the County's reasonable judgment, such entry is necessary to prevent waste, physical deterioration, safety hazards and/or other circumstances that threaten the value of the Open Space and the Marina, and where the EDA or its subtenant is in default of its covenants and obligations herein with respect to any of the foregoing matters.

(ix) Nothing in this Lease shall imply any duty or obligation upon the part of the County to do any work or to make any alterations, repairs (including, but not limited to, repairs and other restoration work made necessary due to any fire, other casualty or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, which may be payable in respect thereof), additions or improvements of any kind whatsoever to the Facility. The performance thereof by the County shall not constitute a waiver of the EDA or its subtenant's default in failing to perform the same.

(x) At the Final Expiration Date, ownership of the Facility and any Improvements made thereto shall transfer to the County. The EDA agrees to execute any documents necessary to effect such transfer.

(d) The EDA or its subtenant may, with the prior written consent of the County, make improvements to the landscaping in the Open Area, such as, but not limited to, the installation of sod, mulch, plants, trees, benches, water features, etc. ("Landscape Improvements"). Any request for Landscape Improvements shall be submitted to the County in writing along with plans illustrating the location and type of plantings and improvements proposed. Such plans shall be submitted by the EDA or its subtenant to the County for review and approval by the appropriate County departments. The County shall, in writing, approve, conditionally approve, or deny the Landscape Improvements within thirty (30) days of receipt of the request and illustrative plans.

12. No Liens on the Premises. The EDA or its subtenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of the EDA or its subtenant. Should any claim of lien or other lien be filed against the Premises by reason of any act or omission of the EDA or its subtenant or any of the EDA or its subtenant's agents, employees, contractors, or representatives, then the EDA or its subtenant shall cause the same to be canceled and discharged of record by bond or otherwise within thirty (30) days after the filing thereof. Should the EDA or its subtenant fail to discharge such lien within such thirty (30) day period, then the County may discharge the same, in which event the EDA or its subtenant shall reimburse the County, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the County in connection



therewith. The remedies provided herein shall be in addition to the other remedies available to the County under this Lease or otherwise. The EDA or its subtenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, mortgage, or other encumbrance upon the reversionary or other estate of the County, or any interest of the County in the Premises. NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES, OR MATERIALS FURNISHED TO THE PREMISES SHALL ATTACH TO OR AFFECT THE INTEREST OF THE COUNTY IN AND TO THE PREMISES.

13. Damage or Destruction.

(a) If all or any part of the Building shall be destroyed or damaged by fire or other casualty required to be insured against under this Lease, then the County shall, as promptly as feasible, repair such damage and restore the Building as nearly as possible to the condition that existed immediately prior to the occurrence of such casualty. The County shall not be obligated to repair, restore, or replace any fixture, improvement, alteration, furniture, or other property owned, installed, or made by the EDA or any subtenant, all of which shall be repaired, restored, or replaced by the EDA or its subtenant. If, because of the substantial extent of the damage or destruction, the County should decide not to repair or restore the Premises, the County may terminate this Lease forthwith at the County's sole option by giving the EDA a written notice of its intention to terminate within thirty (30) days after the date of the fire, flood, or other casualty.

(b) The EDA shall immediately notify the County of any damage to the Premises caused by fire, flood, or any other casualty.

(c) No damage, compensation, or claim shall be payable by the County for inconvenience, loss of business, or annoyance arising from any repair or restoration of any portion of the Premises due to fire or other casualty.

14. Termination. Either party may terminate this Lease with written notice to the other party not less than sixty (60) days prior to the expiration of the Initial Term or any Renewal Term.

15. Events of Default. The failure by either the County or the EDA to satisfy any of the covenants, agreements, or conditions of this Lease shall be deemed to be an event of default ("Event of Default") under this Lease. Upon any Event of Default, the non-defaulting party shall provide written notice to the defaulting party. Upon receiving notice of an Event of Default, the defaulting party may (1) cure the default within thirty (30) days, or (2) request a meeting with the non-defaulting party's representative to find a mutually agreeable solution within thirty (30) days. For purposes of this Lease, the representatives for the County and the EDA shall be the County Administrator and the Chairman of the EDA, respectively.

16. Default Remedies. If either party fails to (1) cure an Event of Default within thirty (30) days, or (2) make progress towards a mutually-agreeable solution within thirty (30) days, the other party may provide notice of termination, effective thirty (30) days thereafter. In the case of any uncured default, termination, re-entry, expiration or dispossession of possession by summary proceedings or otherwise, the EDA shall remain liable only for all Rent and direct and documented damages that may be due or sustained by the County up to the time this Lease terminates or the County re-enters the Premises, whichever occurs earlier, and the performance of all other obligations of the EDA accruing under this Lease through such date (collectively "Accrued

Damages”). The County agrees to use reasonable good faith efforts to cooperate with the EDA in re-leasing the Premises and minimizing the damages suffered by the County and payable by the EDA.

17. Notices. All notices or other communications to be given under this Lease shall be made in writing and shall be deemed duly given upon delivery to the following applicable addresses either (i) in person or by reputable private courier (with receipt therefor); (ii) by certified or registered mail, return receipt requested; or (iii) by Federal Express or other reputable overnight courier service.

COUNTY

EDA

County Administrator  
Post Office Box 8784  
101 Mounts Bay Rd.  
Williamsburg, Virginia 23187

Chairman, Economic Development Authority  
Post Office Box 8784  
101 Mounts Bay Rd.  
Williamsburg, Virginia 23187

With a copy to:

With a copy to:

County Attorney  
Post Office Box 8784  
101 Mounts Bay Rd.  
Williamsburg, Virginia 23187

Russell Seymour, Economic Dev. Dir.  
Post Office Box 8784  
101 Mounts Bay Rd.  
Williamsburg, Virginia 23187

Any addresses may be changed by written notice duly given by either party to the other.

18. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

19. Successors and Assigns. The provisions of this Lease shall bind and inure to the benefit of each of the parties and their respective successors and assigns.

20. Attorney’s Fees. If the County and the EDA are involved in any litigation regarding the performance of their obligations under this Lease, then each party shall be responsible for all legal fees and expenses incurred by such party in connection with such litigation.

21. Estoppel Certificate. Within ten (10) days after receipt of a request, the County and the EDA agree to deliver to the other party a duly executed and acknowledged instrument certifying to the party’s best knowledge (i) whether this Lease is in full force and effect (and if not, why); (ii) as to the existence of any default, including the nature or extent of such default; (iii) whether there are any defenses, counterclaims or offsets to such default; (iv) whether there has been any modification or amendment to this Lease, and specifying the nature of such modification; (v) as to the commencement and expiration dates of the Term; (vi) as to the date to which Rent has been paid; and (vii) as to such other matters relating to this Lease as may be reasonably requested that do not modify or otherwise alter the rights under this Lease of the party executing the estoppel certificate. Any such certificate may be conclusively relied upon by the requesting party and by

any other person to whom it has been exhibited or delivered, and the contents of the certificate shall be binding upon the party executing such certificate.

22. Final Understanding; Captions; Pronouns. This Lease represents the final understanding and complete agreement between the County and the EDA. This Lease cannot be modified except by a writing signed by the County and the EDA. The captions in this Lease are for purposes of reference only and shall not limit or define the meaning of the provisions of this Lease. Where the context requires, the use of any gender shall include all genders, and the singular shall include the plural and vice-versa.

23. Amendment. This Lease may be amended by written agreement of both parties.

24. Common Representation. The County and the EDA understand that both parties to this Lease are represented by the James City County Attorney's Office (the "Attorney") and have each been informed by the Attorney of the potential conflicts that may arise from such common representation and consents to such common representation. In the event of any dispute between the County and the EDA regarding this Lease, the Attorney shall withdraw from representing either the County or the EDA in such dispute.

WITNESS the following signatures and seals:

COUNTY OF JAMES CITY, VIRGINIA:

  
\_\_\_\_\_  
Bryan Hill, County Administrator

ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY:

  
\_\_\_\_\_  
Robin Carson, Vice Chairman