

**A G E N D A**  
**JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY**  
**REGULAR MEETING**  
**101 D Mounts Bay Road, Williamsburg, VA 23185**  
**January 11, 2018**  
**8:00 AM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF MINUTES**

1. December 14, 2017 EDA Retreat Minutes

**D. FINANCIAL REPORTS**

1. November and December 2017 Financial Reports

**E. CLOSED SESSION**

**F. NEW BUSINESS**

1. Landscape Improvements at the Marina
2. Marina Maintenance
3. EDA Parcel Maintenance
4. Retreat Follow-up

**G. OLD BUSINESS**

**H. LIAISON REPORTS**

**I. DIRECTOR'S REPORT**

1. January Report

**J. UPCOMING DATES OF INTEREST**

1. GWP Board Meeting - January 24th at 12 p.m.
2. Ribbon Cutting - January 27th at 1 p.m., Dreams Gymnastics Center
3. LPGA Tournament - May 17-20, 2018

**K. ADJOURNMENT**

1. Adjourn until 8 a.m. on February 8, 2018 for the Regular Meeting

**ITEM SUMMARY**

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Teresa Fellows, EDA Recording Secretary

SUBJECT: December 14, 2017 EDA Retreat Minutes

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**ATTACHMENTS:**

	Description	Type
	121417 Retreat Minutes	Minutes

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/9/2018 - 10:42 AM

**MINUTES**  
**JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY**  
**RETREAT**  
**5537 Centerville Road, Williamsburg, VA 23188**

**December 14, 2017**  
**8:30 AM**

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**A. CALL TO ORDER**

At 8:34 a.m., a quorum was established and the meeting Called to Order.

**B. ROLL CALL**

Paul W. Gerhardt  
Robin Bledsoe  
Rick Shippey  
Christopher J. Odle  
Marshall N. Warner  
Robin D. Carson, Vice Chairman  
Thomas G. Tingle, Chairman

Also Present:

Amy B. Jordan, EDA Secretary  
Teresa J. Fellows, EDA Recording Secretary  
Maxwell Hlavin, EDA Legal Counsel  
Stephanie Lahr, EDA Fiscal Agent  
Kate Sipes, Assistant Director, Economic Development  
Laura Messer, Tourism Coordinator  
Jason Purse, Assistant County Administrator  
Sue Mellen, Director, Financial and Management Services  
Paul Holt, Director, Community Development  
Jody Puckett, Facilitator

**C. ROUTINE BUSINESS**

1. Organizational Meeting and Appointment of Officers

A motion to Appoint Marshall Warner as Chairman was made by Thomas Tingle, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

A motion to Appoint Robin Bledsoe as Vice Chair was made by Thomas Tingle, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

2. Adoption of 2018 Meeting Dates and Times

A motion to Approve was made by Marshall Warner, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

3. Minutes Adoption - November 9, 2017 Regular Meeting

A motion to Approve was made by Marshall Warner, the motion result was Passed.  
AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0  
Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle

4. Requested Subordination Agreement

A motion to Approve was made by Christopher Odle, the motion result was Passed.  
AYES: 5 NAYS: 0 ABSTAIN: 2 ABSENT: 0  
Ayes: Carson, Odle, Warner, Bledsoe, Tingle  
Abstain: Gerhardt, Shippey

Ms. Jordan gave a brief overview of the memorandum and resolution included in the Agenda Packet.

Mr. Shippey declared his intent to abstain from the discussion and vote due to his conflict of interest as a principal investor in Billsburg Brewery.

Mr. Gerhardt declared his intent to abstain from the discussion and vote due to his conflict of interest as his law firm represents the principals of Billsburg Brewery.

**D. PRESENTATIONS/DISCUSSIONS**

1. Retreat Overview

Ms. Puckett took over the meeting, as facilitator, at 8:47 a.m. and gave a brief overview of the format for the remainder of the morning.

2. Review of Research and Planning Documents

Mr. Christopher Johnson, Ombudsman, addressed the Authority giving an overview of the documents included in the Agenda Packet. He stated that since the Business Climate Task Force Report was presented to the Board of Supervisors in 2008, considerable progress has been made to address the report's recommendations. Comprehensive Plan Updates were adopted in 2009 and 2015 which incorporated input from the Office of Economic Development and the Economic Development Authority into the Goals, Strategies and Actions and highlighted successes and opportunities.

In an effort to promote economic development initiatives, County staff has processed multiple amendments to the Zoning Ordinance with particular emphasis on the Business, Industrial and Mixed Use Districts. These amendments have expanded the list of uses which can be approved administratively and made the development review process more predictable and transparent, allowed for greater flexibility in decision making and improved communication.

Mr. Johnson stated that another item that the Authority discussed several months ago was the formation of a Business Climate Think Tank which would be comprised of two Authority members, a Planning Commission member and a Board of Supervisors member.

Mr. Purse stated that he would like to see the Business Climate Think Tank move forward.

General discussion ensued about the relationship between Planning and Economic Development and how the two offices work together when a plan or application for a business comes into the Planning Division.

At 9:04 a.m., Ms. Ruth Larson, Board of Supervisors Liaison, joined the meeting.

Ms. Bledsoe stated that when she was a Planning Commission member, there were many times that

she would have liked to have had input from Economic Development on land use cases that involved businesses. She hopes that there can be more involvement from the Authority with the Planning Commission in the future.

### 3. Evaluate Target Sectors

Ms. Puckett stated that she is going to ask everyone to rank their top three target sectors identified in the Greater Williamsburg Partnership's (GWP) Target Sector Analysis.

The Authority spent several minutes individually identifying the three target sectors that it felt were the most important for the Authority to focus its efforts and resources.

The members of the Authority ranked the five target sectors in the following order:

1. Advanced Materials and Components - received 8 votes
2. Professional and Technical Services - received 7 votes
3. Food and Beverage - received 5 votes
4. Tourism - received 2 votes
5. Defense - received 2 votes

The Authority generally discussed its thought process for identifying the top three target sectors. Several members stated that there is the existing inventory to support the Professional and Technical Services sector and so this is one that makes sense to focus on. The consensus seemed to be that the Food and Beverage sector is the one that the Authority should focus its resources, as that would have the quickest impact and would be a boost to the Tourism sector. Everyone agreed that Advanced Materials and Components is the sector that will take the most time, energy and resources to see a return, but a success in that sector would have a significant impact on the economy. Other members stated that Food and Beverage and Tourism are sectors that are continuing to see growth and are the best for short-term returns on investment. Sports tourism and becoming a food/beverage destination are trends that have been happening in our area for the past few years.

General discussion ensued about the various target sectors and their impact on our economy.

At 9:35 a.m., the Authority recessed for a break.

At 9:55 a.m., the Authority reconvened.

### 4. Prioritize Needs

Ms. Puckett stated that now that the group has determined its top three target sectors, what needs to be done to have an impact in those sectors. What can the Authority do, or what tools are needed? How can the Economic Development staff support and help the Authority with its goals? She handed each member a sheet entitled "What needs to be done in order to pursue \_\_\_\_\_ Target Market?" Each sheet had the following options listed, as well as space for additional ideas:

1. Develop assessment of available product
2. Identify land for future development
3. Inventory existing office space
4. Build or improve infrastructure
5. Create areas for strategic investment and develop long-term vision
6. Develop incentives
7. Align administrative and legislative processes for investment
8. Leverage existing opportunities and relationships

At 10:05 a.m., the Authority broke into two small groups to discuss and identify the tools needed to pursue the top three target sectors that were identified. The small group discussions continued until 10:45 a.m.

Ms. Carson stated that her group felt that it was necessary to do all of the necessary assessments for each target sector. They felt that for advanced materials and components, that it is important to continue to work with the subject matter expert, and this would be where a consultant would be needed to pull information together on available product and what needs to be done to get sites ready. Their third priority would be to take all the information gathered and determine the areas for strategic investment and develop the long-term vision. Initially, the up-front cost would be minimal, except for hiring a consultant.

Mr. Tingle stated that his group felt that the first three items on the list are things that Economic Development staff can pull together and work on updating. His group spent most of its time discussing removal of barriers and streamlining the legislative process. Finally, with the three target sectors, advanced materials and components, food and beverage, and professional services, it felt we should really dig in the ordinances and see what is there that would prevent those sectors from moving forward in a streamlined process. His group also discussed incentives and thinks staff should continue to develop those. They felt that creating areas for strategic investment could be target sector specific, but that would have budgetary implications. Finally, they believed that they should take something to the Board of Supervisors and ask for a large sum for infrastructure improvements either in Stonehouse or at the bottom end of the County.

Ms. Jordan clarified that infrastructure improvements means extending the road in Green Mount or building the shell building in James River.

Mr. Tingle stated correct.

General discussion ensued about streamlining the legislative process and removing barriers.

The Authority and staff also discussed the budget timeline and its implications on these goals.

Ms. Puckett wrapped up the discussion by saying that she has heard three different sets of tools needed to proceed with the Authority's Strategic Initiatives: gather the research and get organized, streamline the legislative process and focus on infrastructure improvements.

#### 5. Review Regional Funding

Ms. Puckett asked the Authority to participate in another dot exercise to prioritize the dollars being spent on Regional Partnerships. The members were given green, yellow and red dots to indicate items that should continue to be funded, items that they are unsure of and items that should not be funded anymore. The following is the result of the exercise:

WHO/WHAT	Green	Yellow	Red
<b>GWP/HREDA</b>	<b>8</b>	0	0
<b>LPGA</b>	<b>6</b>	0	0
<b>Peninsula Chamber of Commerce</b>	<b>6</b>	0	0
<b>Launchpad</b>	<b>4</b>	4	0
<b>Virginians for High Speed Rail Funding</b>	<b>3</b>	2	0
<b>Arts Month/GWCTA</b>	0	<b>5</b>	0
<b>COB</b>	0	<b>5</b>	0
<b>Business Appreciation Event (JCC, York, &amp; City EDAs)</b>	0	<b>5</b>	1
<b>Start! Peninsula</b>	2	<b>3</b>	1
<b>W&amp;M Homecoming/Alumni Recruiting event</b>	0	2	<b>4</b>

<b>SBDC</b>	0	1	<b>5</b>
<b>RAISE (airport marketing)</b>	0	2	<b>6</b>

## 6. Identify Incentives

The Authority was given the following list of possible incentive options in order to drive the discussion:

### Traditional

- Capital investment (Technology Zone, County-wide, with investment thresholds)
- Specific to an industry sector (i.e., manufacturing, or specifically advanced materials, food & beverage, tech/professional)
- Redevelopment
- Demolition
- Physical improvements for investment or reinvestment

### Non-traditional

- Stormwater improvements or credits
- “Green” or sustainable construction (such as green roof, geothermal, greywater reuse, solar/wind/alternative energy)
- Water conservation measures
- Technology grant for fiber installation
- “Made in JCC”
- Childcare
- Job Creation

Ms. Puckett asked for a general discussion about what incentives might work for the three target sectors that were identified earlier.

General discussion ensued about the machinery and tools tax grant, Business, Professional and Occupational License (BPOL) Tax grants or rebates, tourism zones and an expedited review process. It was also noted that this area struggles to get a piece of the State incentives that are available because it is not as big and not distressed. We cannot be reliant on the State incentives to make us competitive, the County needs to be able to fill in the gap.

It was noted that a marketing plan needs to be in-place once new incentives are adopted, it is important to get the word out that these new incentives are available.

## 7. Wrap Up and Next Steps

Ms. Puckett wrapped-up the Retreat by determining the following next steps:

1. Staff to prepare the 3-5 target sector initiatives and any budgetary implications for FY19 and FY20
2. Regional partnership information and the return on investment
3. Prioritize the Business Climate Think Tank
4. Summary of the incentive ideas
5. Develop EDA Budget and any potential future Capital Improvement Projects (CIP) requests in line with the three to five target sector initiatives

The Authority thanked staff for all of their work in putting together the materials and thanked Ms. Puckett for leading them through the discussion.

## E. ADJOURNMENT

1. Adjourn until 8 a.m. on January 11, 2018 for the Regular Meeting

A motion to Adjourn was made by Marshall Warner, the motion result was Passed.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

Ayes: Carson, Gerhardt, Odle, Warner, Bledsoe, Shippey, Tingle



**ITEM SUMMARY**

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Stephanie Lahr, EDA Fiscal Agent

SUBJECT: November and December 2017 Financial Reports

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**ATTACHMENTS:**

	Description	Type
▣	November Treasurer Report	Exhibit
▣	November Expenditure Report	Exhibit
▣	December Treasurer Report	Exhibit
▣	December Expenditure Report	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/8/2018 - 2:51 PM

**FY 18**  
**Jennifer D. Tomes, Treasurer**  
**Report of Collections**  
**Economic Development Authority**  
**November 2017**

	<b>Budget FY 2018</b>	<b>Actual as of 11/30/2017</b>	<b>Actual as of 11/30/2016</b>	<b>% Difference from Prev Year</b>
Expense Reimbursement	\$0.00	\$7,885.36	\$4,208.74	87.36%
Interest Revenue	\$5,000.00	\$1,991.55	\$3,280.42	-39.29%
Lease Income	\$14,725.00	\$14,725.00	\$3,000.00	390.83%
Miscellaneous Revenue	\$0.00	\$1,010.00	\$0.00	0.00%
Bond Fee Revenue	\$20,000.00	\$0.00	\$6,331.26	-100.00%
Marina Property	\$50,000.00	\$15,000.00	\$0.00	0.00%
JCC Contribution	\$0.00	\$26,992.78	\$0.00	0.00%
Launchpad Client Revenue	\$0.00	\$0.00	\$7,189.03	-100.00%
Launchpad Member Contributions	\$0.00	\$0.00	\$0.00	0.00%
Landlord Contributions	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$69,000.00</u>	-100.00%
<b>TOTALS</b>	<b><u>\$89,725.00</u></b>	<b><u>\$67,604.69</u></b>	<b><u>\$93,009.45</u></b>	<b><u>-27.31%</u></b>

	<b>Actual as of 11/30/2017</b>	<b>Actual as of 11/30/2016</b>	<b>% Difference from Prev Year</b>
Checking Acct Balance	\$174,884.28	\$79,911.95	118.85%
Investment Balance	<u>\$231,985.96</u>	<u>\$780,024.29</u>	-70.26%
<b>TOTAL BANK BALANCE</b>	<b><u>\$406,870.24</u></b>	<b><u>\$859,936.24</u></b>	<b><u>-52.69%</u></b>
<b>LEDGER BALANCE*</b>	<b><u>\$405,761.24</u></b>	<b><u>\$844,936.24</u></b>	<b><u>-51.98%</u></b>

\*Ledger balance may vary from bank balance because of outstanding checks, deposits not posted to the bank account before month-end, and other adjustments.

**JAMES CITY COUNTY**  
**EXPENDITURES- ALL FUNDS**

**James City County**

08-Jan-18

jccExp: Year ( 2018 ) Period ( 5 )

Ledger ID	Ledger Description	TOTAL BUDGET	MTD EXPENSES	ENCUMBRANCES	YTD EXPENSES	BALANCE	ACTUAL %
<b>(021) EDA</b>							
<b>(259) EDA Operating</b>							
021-259-0200	ADVERTISING	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0.00%
021-259-0203	PROFESSIONAL SERVICES	\$0.00	\$56.43	\$0.00	\$334.93	(\$334.93)	0.00%
021-259-0205	PROMOTION	\$60,701.00	\$3,029.99	\$0.00	\$36,324.89	\$24,376.11	59.84%
021-259-0220	TRAVEL AND TRAINING	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-0222	LOCAL TRAVEL	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0.00%
021-259-0235	ANNUAL AUDIT	\$10,039.00	\$2,739.00	\$0.00	\$10,039.00	\$0.00	100.00%
021-259-0319	OFFICE SUPPLIES	\$400.00	\$0.00	\$0.00	\$45.46	\$354.54	11.37%
021-259-0710	LEGAL SERVICES	\$6,000.00	\$500.00	\$0.00	\$2,500.00	\$3,500.00	41.67%
021-259-5900	COUNTY BDGT ASSISTANCE BY EDA	\$111,659.00	\$0.00	\$0.00	\$109,159.00	\$2,500.00	97.76%
021-259-5902	VHSR	\$2,500.00	\$0.00	\$0.00	\$0.00	\$2,500.00	0.00%
021-259-5903	JAMES RIVER COMMERCE CTR-OPS	\$25,000.00	\$0.00	\$9,767.00	\$0.00	\$15,233.00	39.07%
021-259-5904	MAINLAND FARM OPER EXPENSES	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-5908	NN/WMBG INTL AIRPORT FUNDING	\$26,804.00	\$0.00	\$0.00	\$0.00	\$26,804.00	0.00%
021-259-5909	OED DISCRETIONARY EXPENDITURE	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-5913	SMALL BUSINESS ASSISTANCE	\$25,000.00	\$0.00	\$0.00	\$2,465.00	\$22,535.00	9.86%
021-259-5915	MARINA PROPERTY	\$747,707.00	\$250.00	\$60,058.94	\$658,921.21	\$28,726.85	96.16%
021-259-5918	CONTINGENCY	\$317,581.00	\$0.00	\$0.00	\$0.00	\$317,581.00	0.00%
<b>Subtotal (259) EDA Operating:</b>		<b>\$1,334,691.00</b>	<b>\$6,575.42</b>	<b>\$69,825.94</b>	<b>\$819,789.49</b>	<b>\$445,075.57</b>	<b>66.65%</b>

**FY 18**  
**Jennifer D. Tomes, Treasurer**  
**Report of Collections**  
**Economic Development Authority**  
**December 2017**

	<b>Budget FY 2018</b>	<b>Actual as of 12/31/2017</b>	<b>Actual as of 12/31/2016</b>	<b>% Difference from Prev Year</b>
Expense Reimbursement	\$0.00	\$7,885.36	\$4,208.74	87.36%
Interest Revenue	\$5,000.00	\$1,991.81	\$3,925.66	-49.26%
Lease Income	\$14,725.00	\$14,725.00	\$3,000.00	390.83%
Miscellaneous Revenue	\$0.00	\$88,358.08	\$91,140.65	-3.05%
Bond Fee Revenue	\$20,000.00	\$0.00	\$6,331.26	-100.00%
Marina Property	\$50,000.00	\$20,000.00	\$0.00	0.00%
JCC Contribution	\$0.00	\$56,827.13	\$0.00	0.00%
Launchpad Client Revenue	\$0.00	\$0.00	\$9,976.53	-100.00%
Launchpad Member Contributions	\$0.00	\$0.00	\$69,000.00	0.00%
Landlord Contributions	\$0.00	<u>\$0.00</u>	<u>\$0.00</u>	0.00%
<b>TOTALS</b>	<b><u>\$89,725.00</u></b>	<b><u>\$189,787.38</u></b>	<b><u>\$187,582.84</u></b>	<b><u>1.18%</u></b>

	<b>Actual as of 12/31/2017</b>	<b>Actual as of 12/31/2016</b>	<b>% Difference from Prev Year</b>
Checking Acct Balance	\$256,053.63	\$60,709.55	321.77%
Investment Balance	<u>\$232,074.36</u>	<u>\$780,427.30</u>	-70.26%
<b>TOTAL BANK BALANCE</b>	<b><u>\$488,127.99</u></b>	<b><u>\$841,136.85</u></b>	<b><u>-41.97%</u></b>
<b>LEDGER BALANCE*</b>	<b><u>\$394,778.09</u></b>	<b><u>\$827,567.62</u></b>	<b><u>-52.30%</u></b>

\*Ledger balance may vary from bank balance because of outstanding checks, deposits not posted to the bank account before month-end, and other adjustments.

**JAMES CITY COUNTY**  
**EXPENDITURES- ALL FUNDS**

08-Jan-18

**James City County**

jccExp: Year ( 2018 ) Period ( 6 )

Ledger ID	Ledger Description	TOTAL BUDGET	MTD EXPENSES	ENCUMBRANCES	YTD EXPENSES	BALANCE	ACTUAL %
<b>(021) EDA</b>							
<b>(259) EDA Operating</b>							
021-259-0200	ADVERTISING	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0.00%
021-259-0203	PROFESSIONAL SERVICES	\$0.00	\$0.00	\$0.00	\$334.93	(\$334.93)	0.00%
021-259-0205	PROMOTION	\$60,701.00	\$0.00	\$0.00	\$36,324.89	\$24,376.11	59.84%
021-259-0220	TRAVEL AND TRAINING	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-0222	LOCAL TRAVEL	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00	0.00%
021-259-0235	ANNUAL AUDIT	\$10,039.00	\$0.00	\$0.00	\$10,039.00	\$0.00	100.00%
021-259-0319	OFFICE SUPPLIES	\$400.00	\$0.00	\$0.00	\$45.46	\$354.54	11.37%
021-259-0710	LEGAL SERVICES	\$6,000.00	\$500.00	\$0.00	\$3,000.00	\$3,000.00	50.00%
021-259-5900	COUNTY BDGT ASSISTANCE BY EDA	\$111,659.00	\$0.00	\$0.00	\$109,159.00	\$2,500.00	97.76%
021-259-5902	VHSR	\$2,500.00	\$0.00	\$0.00	\$0.00	\$2,500.00	0.00%
021-259-5903	JAMES RIVER COMMERCE CTR-OPS	\$25,000.00	\$0.00	\$9,767.00	\$0.00	\$15,233.00	39.07%
021-259-5904	MAINLAND FARM OPER EXPENSES	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-5908	NN/WMBG INTL AIRPORT FUNDING	\$26,804.00	\$0.00	\$0.00	\$0.00	\$26,804.00	0.00%
021-259-5909	OED DISCRETIONARY EXPENDITURE	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00	0.00%
021-259-5913	SMALL BUSINESS ASSISTANCE	\$25,000.00	\$0.00	\$0.00	\$2,465.00	\$22,535.00	9.86%
021-259-5915	MARINA PROPERTY	\$747,707.00	\$44,501.52	\$15,557.42	\$703,422.73	\$28,726.85	96.16%
021-259-5918	CONTINGENCY	\$317,581.00	\$0.00	\$0.00	\$0.00	\$317,581.00	0.00%
<b>Subtotal (259) EDA Operating:</b>		<b>\$1,334,691.00</b>	<b>\$45,001.52</b>	<b>\$25,324.42</b>	<b>\$864,791.01</b>	<b>\$444,575.57</b>	<b>66.69%</b>

ITEM SUMMARY

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Kate Sipes, Assistant Director, Economic Development

SUBJECT: Landscape Improvements at the Marina

The marina lease between the EDA and Billsburg Brewery (dated December 9, 2016) indicates the tenant may make improvements to the landscaping on the premises, with prior written consent of the EDA. Per the language in the signed lease (Section D:10; Pg. 6), the tenant has requested approval to collaborate with the Coastal Virginia Wildlife Observatory to make improvements to the existing garden on site. The garden is located in the “Common Area,” or non-exclusive leasehold interest area. OED staff met on site with Mr. Brian Taber, President of the Coastal Virginia Wildlife Observatory, who indicated the group was interested in cleaning up, replanting, and maintaining the garden. Dave Baum from Billsburg Brewery referred Mr. Taber to OED staff.

Per the discussion, it was agreed the garden would remain the current size or smaller (see attached Marina landscape map), and all improvements proposed would occur inside the existing fence. Native plants would be the focus, and attention would be paid to making the fence line facing the access road look attractive from the road. The area would be accessible to guests and children, with signs informing visitors of the species and varieties planted. Mr. Taber mentioned the volunteers were interested in knowing their efforts would last more than one season; staff informed Mr. Taber a new master plan would be soon in the works but it was safe to expect their efforts would be appreciated for at least two years. At that time, if the existing garden area needed to be disturbed, staff feels the plants could be relocated elsewhere on site or across the street, and would therefore not be wasted. Mr. Taber indicated the volunteer work could begin as early as this Spring.

Staff is confirming with other County department staff what approval process may be necessary to proceed.

ATTACHMENTS:

	Description	Type
☐	Deed of Lease	Exhibit
☐	Signed Lease	Exhibit
☐	Map	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/9/2018 - 10:59 AM

**JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY**

**MARINA DEED OF LEASE**

THIS DEED OF LEASE, entered into this 2nd day of August, 2016, by and between the Economic Development Authority of James City County, Virginia a political subdivision of the Commonwealth of Virginia (the "EDA"), and Billsburg Brewery, Inc., a Virginia stock corporation (the "Tenant") (each a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, the EDA has leased a portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as James City County Tax Map Parcel Number 4640100012 (in its entirety referred to as the "Marina") from the County of James City, Virginia (the "County"); and

WHEREAS, the EDA advertised a Request for Proposal (Request for Proposal, RFP, published December 12 and 16, 2015 in the Virginia Gazette) (the "RFP") to establish a commercial use in the James City County Marina. The Tenant submitted a proposal dated January 8, 2016 (the "Proposal"). The RFP and Proposal are incorporated herein by reference; and

WHEREAS, the EDA determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, on August 2, 2016, the EDA held a meeting and, by a 5 to 0 <sup>(2 absent)</sup> vote, adopted a resolution authorizing the Vice Chairman to execute this Lease Agreement with the Tenant.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions stipulated in this Deed of Lease, hereinafter referred to as the "Lease," the EDA does hereby lease to Tenant, and Tenant does hereby rent from the EDA, the following described lots, pieces or parcels of land, together with all improvements thereon to-wit:

An exclusive leasehold interest in a portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as James City County Tax Map Parcel Number 4640100012 (in its entirety referred to as the "Marina"), the boundaries of which are approximately shown in red on Exhibit A, which is attached to and made a part of this Lease, consisting of the top floor of the building shown in red on Exhibit A (the "Building");

AND

A non-exclusive leasehold interest in a shared area that provides access and parking as shown in green on Exhibit A (the "Shared Area") (the Building and the Shared Area are collectively referred to as the "Premises");

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.

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

**1. TERM**

a. The initial term of this Lease shall be for ten (10) year(s) (the "Initial Term") and shall commence upon signature of the Parties (the "Commencement Date"). If the EDA, for any reason whatsoever, cannot deliver possession of the Building to the Tenant on the Commencement Date, then this Lease shall not be affected or impaired in any way except as herein expressly provided and the EDA shall not be liable to the Tenant for any loss or damage resulting therefrom or caused thereby. In such event, the rent reserved herein shall not become due and payable until the date on which the EDA gives Tenant written notice that the Tenant can take possession of the Building and more than fourteen days have passed since such notice. In the event the EDA cannot deliver the Building within 180 days of the Commencement Date, the Tenant has the right in its sole discretion to terminate this Lease with no further liability. Unless expressly provided otherwise herein, rent shall commence on the Commencement Date.

b. If the Tenant is unable to obtain the necessary state or federal approvals for operation of the Proposal within one (1) year of the Commencement Date, either party may terminate this Lease.

c. The Initial Term shall end on the tenth (10<sup>th</sup>) anniversary of the Commencement Date. Provided the Tenant is not in default, this Lease may renew for up to three (3) additional terms of five (5) years each (each a "Renewal Term"). The Tenant may request to extend this Lease upon written notice to the EDA at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term. Upon receipt of such request, the EDA shall give notice to the Tenant either accepting or rejecting the request for extension at least forty-five (45) days prior to the expiration of the then-current term. The Initial Term in conjunction with any Renewal Term of this Lease is referred to as the "Term." The expiration of this Lease at the end of the Term shall be referred to as the "Expiration Date." Subsequent renewals are permitted upon mutual written agreement between the parties.

**2. RENT**

During the Initial Term of this Lease, Tenant covenants to pay a base annual rental to the EDA equal to Twenty-Four Thousand Dollars (\$24,000) ("Rent"), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Two Thousand Dollars (\$2,000). After the Initial Term, Rent shall increase by three percent (3%) for each subsequent year of the Term. The rent for any terms subsequent to the Final Expiration Date of this Lease shall be as mutually agreed upon by the parties. All Rent shall be waived by the EDA as long as the conditions of the Performance Agreement, attached as Exhibit B and



hereby incorporated into this Lease, are satisfied. If the Tenant fails to satisfy the terms of the Performance Agreement, causing Rent to become payable, the EDA shall provide written notice to the Tenant. Cancellation or modification of the Rent waiver provided under this Lease and the Performance Agreement shall not be considered an amendment of this Lease.

The Tenant shall pay Rent to the EDA, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the EDA and without set-off or deduction. Notwithstanding anything contained herein to the contrary, the Tenant's obligation to pay Rent under this Lease is completely separate and independent from any of the EDA's obligations under this Lease. For each monthly Rent payment the EDA receives after the tenth (10th) day of the month, the EDA shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of five percent (5%) of all Rent due for such month. Rent shall be paid to the following:

James City County Economic Development Authority  
Account # 021-309-5915  
P.O. Box 8784  
Williamsburg, VA 23187-8784

### **3. FUTURE WAREHOUSE CONSTRUCTION**

This Lease is executed by the Parties with the understanding that the EDA intends to construct a warehouse facility of up to ten thousand (10,000) square feet (the "Facility") adjacent to the Building, and lease all or a portion of the Facility to the Tenant. The Facility shall be suitable for alteration by the Tenant at the Tenant's cost to satisfy its needs for the Brewery. Prior to the commencement of construction of the Facility, the Parties shall execute a lease agreement for the Facility. If the lease agreement for the Facility is not executed by the Parties by January 1, 2017, either Party may terminate this Lease by written notice to the other Party.

### **4. TAXES AND ASSESSMENTS**

The Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof, excepting only real property. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed with the real property, the Tenant shall pay to the EDA its share of such taxes within ten (10) days after delivery to the Tenant by the EDA of a statement in writing setting forth the amount of such taxes applicable to the Tenant. The Tenant is not responsible for paying real estate taxes or any portion of the real estate taxes, if any.

### **5. USE OF PREMISES**

a. The Tenant shall be permitted to use the Premises for the uses described in the Proposal (the "Brewery"), which includes any uses permissible under ABC laws for a brewery, and those that may be approved by a majority vote of the EDA, subject to the following provisions:

- i. The Tenant must obtain the EDA's permission prior to any proposed change in the size or scope of the Brewery or prior to establishing any new use at the Premises.

- ii. The Tenant shall never make any use of the Premises which is in violation of any federal, state, or local laws, rules, or regulations, whether now existing or hereafter enacted.
- iii. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the EDA on the Premises.
- iv. The Tenant shall not make exclusive use of the Shared Area without prior written agreement of the EDA.

b. The EDA shall have the option to reserve and use the Premises without cost up to three (3) times per year subject to the following conditions:

- i. No such use shall take place on a day that the Brewery is not operation without prior written agreement by the Tenant.
- ii. Use of the Building shall be requested by the EDA at least sixty (60) days prior to the date of use.
- iii. All good and services provided by the Tenant shall be agreed on and compensated independent of this Lease.

## **6. SIGNS**

The Tenant may not erect, install, or display any sign or other advertising material in or about the Premises without the prior written consent of EDA.

## **7. CONDITION OF THE PREMISES**

a. The Tenant's occupancy and use of the Premises shall be the Tenant's representation to the EDA that the Tenant has examined and inspected the same, finds the Premises to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance of the Premises "as is." The Tenant shall deliver at the end of this Lease each and every part of the Premises in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Premises to the EDA or to an employee of the EDA prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Premises except upon written notice by the EDA in accordance with the terms hereof. The Tenant shall: (i) keep the Premises in good order; (ii) make repairs and replacements to the Premises and premises as needed because of the Tenant's or its employees' or invitees' use, misuse, or primary negligence; and (iii) not commit waste.

b. Upon termination of this Lease or vacation of the Premises by the Tenant, the Tenant shall restore the Premises to the same condition as existed at the Commencement Date at Tenant's sole expense; ordinary wear and tear, alterations approved pursuant to section 8 of this Lease, and damage by insured casualty only excepted. The EDA, however, may elect to require the Tenant to leave alterations performed by or for the Tenant unless at the time of such alterations the EDA agreed in writing that such alterations could be removed upon the expiration or termination of this Lease, or upon Tenant's vacation of the Premises.

## **8. ASSIGNMENT, SUBLETTING AND MORTGAGING**

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Premises, in whole or in part, without the EDA's prior written consent. If consent to assign or sublease is obtained, no such assignment or sublease shall in any way release or relieve the Tenant from any of its covenants or undertakings contained in this Lease, and in all cases under this paragraph, the

Tenant shall remain liable on this Lease during the Term. The Tenant's request for consent to any subletting or assignment of this Lease shall be accompanied by a written statement setting forth the details of the proposed sublease or assignment and any other information the EDA deems relevant. The EDA shall have the right to (a) withhold consent; (b) grant consent; or (c) terminate this Lease as of the effective date of such sublease or assignment. After ten (10) days written notice to the Tenant of the EDA's intention to terminate, the Tenant may withdraw its request for consent and this Lease shall continue with its terms. In the event the Tenant does not withdraw its request for consent to sublet or assign, the EDA may elect to enter into a direct lease with the proposed assignee or subtenant. The Tenant shall be liable for reasonable expenses incurred by the EDA in connection with an assignment, subletting, or mortgage of the Premises.

## **9. UTILITIES**

During the Term of this Lease, the Tenant shall promptly pay all fuel, water, gas, electricity, sewer, telephone, and other utility bills, as the same become due, it being understood and agreed that the Tenant shall promptly make all required deposits for meters and utilities service. The EDA shall not be liable for any interruption or failure in the supply of any utility to the Premises and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the EDA's negligence, nor shall the Lease or any of the EDA's obligations be in any way affected thereby. The Tenant shall bear the cost of extending, expanding, or separately metering any utilities.

## **10. IMPROVEMENTS, REPAIRS, ALTERATIONS, AND MAINTENANCE**

a. Routine maintenance of the Building shall be performed or contracted for by the Tenant at its sole expense and shall include minor, usual, and non-structural repairs and upkeep (e.g., replacement of light bulbs, fixtures, interior and exterior paint, janitorial services, etc.) and including, but not limited to, the following:

- i. Drainage. All drainage pipes and ditches associated with the Premises shall be cleared of any debris, grass clippings, or soil that may be causing malfunction of the facility or diversion of waters in a way that causes damage to other portions of the Marina.
- ii. Vehicle Parking. Placement and maintenance of measures as deemed appropriate by the EDA to ensure that patrons of the Tenant do not park in inappropriate areas.

The Tenant shall not be reimbursed for any Routine Maintenance unless otherwise agreed to in writing by the EDA. The EDA shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have thirty (30) calendar days from the day of receipt of written notification to correct the deficiency. E-mail shall constitute "written notification." If the deficiency is not corrected within this time period, the EDA may procure the required goods or services from other sources and hold the Tenant responsible for any resulting additional purchase, staff, and administrative costs limited to 10% of the repairs made by the EDA. This remedy shall be in addition to other remedies which the EDA may have.

b. The EDA covenants and agrees that it shall comply with the maintenance obligations of its lease with the County. Subject to the terms set forth in the lease between the County and the EDA, the County shall be responsible for the repair or replacement of all aspects of the Building, excepting only the electric heat pump/air conditioning unit, which the Tenant accepts "AS IS." Neither the EDA nor the County shall repair or replace the existing electric heat

pump/air conditioning unit in the Building. Neither the EDA nor the County shall be liable (and shall assess the costs thereof to the Tenant) when any repair or replacement of the Premises is made necessary by the negligent or willful acts or omission of the Tenant, its agents, invitees, or employees. The EDA shall not be liable for or have any obligation to repair or replace any improvements made to the Premises by the Tenant.

c. In the event the Premises becomes out of repair and not in good condition due to either the failure of the EDA to comply with the terms of this Article or a latent defect, then the EDA shall perform or cause to be performed any and all repairs necessary to restore the Premises to a state of good condition and repair. If such repairs are not completed within thirty (30) days after the EDA has received written notice from the Tenant of such state of disrepair, or if such repairs cannot reasonably be completed within such thirty (30) day period and the EDA shall fail to commence such repairs within thirty (30) days after notice and proceed diligently thereafter, then Tenant may either (i) prosecute such repairs itself, and apply the cost of such repairs against the next maturing monthly installment or installments of Base Rent due hereunder; or (ii) if the repairs cost more than Twenty-Five Thousand Dollars (\$25,000.00), terminate this Lease.

d. The Tenant may make improvements to the Building using its own resources. The Tenant may make non-structural alterations, additions, or improvements to the Building not exceeding Five Thousand Dollars (\$5,000) in cost ("Minor Improvement") without the prior written consent of the EDA. Any external Minor Improvement shall be a neutral or muted earth tone color that complements the Marina. Other than routine maintenance, the Tenant shall not make any alterations of, additions to, or changes to the Building which (1) exceed five thousand dollars (\$5,000) in cost, or (2) are structural ("Major Improvement") without the prior written consent of the EDA, such consent not to be unreasonably withheld. Minor Improvements that, at the EDA's sole discretion, aggregate to a Major Improvement, shall be treated as a Major Improvement under this Lease. All such Minor Improvements and Major Improvements (collectively, "Improvements") shall meet local, state, and federal requirements. The Tenant shall perform all work required to improve the Building to a finished condition ready for the conduct of the Tenant's business. The Tenant shall provide construction drawings to the EDA for each proposed Improvement and shall provide the EDA with a cost estimate for each. The EDA shall consider each such proposed Major Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Major Improvement or any portion thereof. Upon completion of any Improvement, the Tenant shall provide the EDA with a set of as-built construction plans. Equipment and machinery shall not be deemed Improvements under this Lease.

e. The Tenant 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 Tenant. Should any claim of lien or other lien be filed against the Premises by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant 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 Tenant fail to discharge such lien within such thirty (30) day period, then the EDA may discharge the same, in which event the Tenant shall reimburse the EDA, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the EDA in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the EDA under this Lease or otherwise. The Tenant 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 EDA, or any interest of the EDA 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 EDA IN AND TO THE PREMISES.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Premises shall terminate and title to the Improvements shall automatically pass to, vest, belong to, and become the property of the EDA. The Tenant shall, if the EDA shall deem it appropriate, execute any further documents to confirm this transfer of title to the EDA with cost of charge to the EDA. The Tenant shall be responsible for the removal of its personal property, upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal. The EDA and Tenant shall negotiate in good faith with regard to the removal of equipment and machinery and/or the sale of same to the EDA.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Premises and equipment to the EDA, broom-clean, including all Improvements, alterations, rebuildings, replacements, changes, or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear and damage by insured casualty excepted.

## **11. EMINENT DOMAIN**

If all of the Premises, or such part thereof as will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the EDA and the Tenant as of such date. If only a portion of the Premises is taken and the Tenant can continue use of the remainder, then this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking.

The EDA shall be entitled to the entire proceeds of any condemnation award; provided, however, that Tenant may pursue a separate claim for the book value less depreciation of Improvements placed on the Premises by Tenant at its own expense, as shown on Tenant's most recent federal income tax return or as certified as a book value amount by Tenant, adjusted for subsequent additions and depreciation to the date of such condemnation, plus amounts, to compensate Tenant for expenses special to Tenant provided the foregoing does not reduce the EDA's award.

## **12. ACCESS TO PREMISES**

a. EDA shall have the right, upon reasonable notice based on the circumstances but not less than twenty four (24) hours prior notice to the Tenant, either itself or through its authorized agents, to enter the Premises (i) to make repairs, alterations or changes as EDA deems necessary, (ii) to inspect the Premises, and (iii) to show the Premises to prospective lessees, mortgagees, and/or purchasers. The EDA shall have the right, either itself or through its authorized agents, to enter the Premises at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option for a Renewal Term. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to common and public areas of the Premises, provided the EDA by regulation may control such access, or as needed for making

repairs and alterations. The EDA shall have the right to enter the Premises at any time in the event of any emergency.

b. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to the Shared Area and public areas of the Marina, provided the EDA and the County may regulate and control such access, or as needed for making repairs and alterations or other public safety reasons.

c. The EDA shall furnish the Tenant with a key to the Building. All keys to the Building shall remain the property of the EDA. No additional locks shall be allowed on any door of the Building without the EDA's written permission, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant may install locks on the doors of individual offices within the Building, provided that the Tenant shall provide a copy of any such keys to the EDA. The Tenant shall supply the EDA with a copy of any keys necessary to access the Facility. Upon termination of this Lease, the Tenant shall surrender to the EDA all keys to the Building, and give to the EDA the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Building.

### **13. HAZARDOUS SUBSTANCE**

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by the Tenant, the Tenant's agents, employees, or contractors without the prior express written consent of the EDA.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local law or becomes regulated by any federal, state or local authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks, pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and local laws and regulations. Notwithstanding the foregoing, ordinary items such as propane, paint, cleaning supplies, etc. shall not be deemed Hazardous Substances.

c. The Tenant shall provide the EDA, in a timely manner, a Material Safety Data Sheet ("MSDS") upon the EDA's request. Said MSDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Premises.

### **14. INSURANCE**

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on all improvements, alterations, renovations, replacements, substitutions, changes, equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Premises, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered), flood and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value") and sufficient so that no co-insurance penalty shall be invoked in case of loss. Such Full Insurable Value shall be determined from time

to time at the request of the EDA (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Premises or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the EDA which approval shall not be unreasonably withheld. The failure of the EDA to request such appraisal shall not release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant and naming the EDA as an additional insured, on a primary basis with no participation required by the EDA's liability policy, against personal injury, including without limitation, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. The EDA reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Premises and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the EDA and the Tenant, "all risk" builders risk insurance on the Premises and all Improvement(s) under construction.

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in the following minimum amounts: Coverage A – Statutory, Coverage B – \$100,000/\$100,000/\$500,000.

e. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the EDA; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises. If requested by the EDA, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the EDA. All insurance policies shall be renewed by the Tenant and proof of such renewals, accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the EDA, at least twenty (20) days prior to their respective expiration dates.

All self-insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the EDA.

f. The EDA and the Tenant mutually release and discharge each other (as well as the officers, directors, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure, equipment, or other real or personal property of the other, or any resulting loss of income or business, that may arise from a fire or other casualty or is otherwise covered by insurance. The above releases also shall apply to any third party, including any insurance company, claiming through or under a party as a result of a right of subrogation. All casualty insurance policies required to be maintained under this Lease shall contain "waiver of subrogation" clauses to carry out these release provisions.

## **15. DAMAGE TO BUILDING**

If, by reason of such fire or other casualty, the Premises is rendered wholly untenable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Premises rendered untenable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Premises by Tenant; (ii) the date the EDA has the Premises ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the EDA could have had the Premises ready had there been no delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing, the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance coverage, the policy must be issued by an insurance carrier reasonably acceptable to the EDA, and the Tenant shall deliver to the EDA a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the EDA no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the EDA for any compensation or damage for loss of use of the whole or any part of the Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Premises during the final two (2) years of the Initial Term or any Renewal Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Premises, then in that event the EDA and/or the Tenant may, at its respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs. In the event the EDA is repairing the Premises, it shall promptly undertake such repairs and follow them through to a conclusion.



## 16. LANDLORD'S LIEN, PROPERTY OF TENANT

All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Premises during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA a first lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease. Upon default or breach of any covenants of this Lease, the EDA shall have all remedies available under the Uniform Commercial Code enacted in Virginia including, but not limited to, the right to take possession of the above mentioned property and dispose of it by sale in a commercially reasonable manner. The Tenant hereby agrees to execute financing statements and continuation statements upon a request to do so by the EDA for the purpose of recording same in the appropriate public records in order to perfect the EDA's security interest, serving notice to third parties of the security interest herein granted. Upon the failure of the Tenant to so execute upon request, the Tenant does hereby appoint the James City County Attorney's Office as Tenant's attorney in fact for said purpose. The Tenant agrees to pay, as additional rent, all filing fees, taxes and other costs and expenses incurred by the EDA in recording such financing statements.

SECOND  
DB REC

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Premises. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Premises; provided, however, that the Tenant shall, at its sole cost and expense, repair all damages caused by such removal. If the Tenant does not remove its property from the Premises upon termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the EDA may dispose of the same in whatever manner the EDA may elect without any liability to the Tenant.

## 17. DEFAULT

a. The happening of any of the following enumerated events shall constitute a default for which the EDA, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any Rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Premises by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Premises except for periods of time during the Pre-Rent Term that Tenant is performing renovations; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent for which Tenant has not moved to dismiss same within thirty (30) days, (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state; or a receiver of the property of the Tenant is appointed; or the levy of execution or other taking of the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to perform any of the other terms, conditions, or covenants of this Lease provided that the EDA has provided thirty (30) days written notice and Tenant has failed to correct same. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that Tenant commences correction efforts within thirty (30) days and completes same within a reasonable time period as approved in writing by the EDA.

b. Should the EDA elect to re-enter and terminate the Tenant's use of the Premises as herein provided, or should the EDA take possession pursuant to legal proceedings or pursuant to any provisions under law, the EDA may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent and upon such other terms and conditions as EDA, in its reasonable discretion may deem advisable. Upon each such re-letting, all rent received by EDA from such re-letting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the EDA; second, to the payment of any costs and expenses for such repossession and re-letting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by the EDA and applied in payment of future Rent as the same may become due and payable hereunder. If the Premises is not re-let as aforesaid, or if the rent received for such re-letting during any month be less than that to be paid during the month by the Tenant to the EDA hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the EDA. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by the EDA shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the EDA may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant will pay to the EDA all expenditures incurred by them in any enforcement of the provisions of this Lease including reasonable fees of attorneys and others employed by the EDA.

c. Except as expressly herein provided to the contrary, any amount due to the EDA not paid when due shall bear simple interest at legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the EDA may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.

e. Notwithstanding the foregoing, the EDA shall make reasonable efforts to mitigate all damages.

f. In the event that the EDA fails to perform any duty under this Lease, it will make repairs within thirty (30) days of notice from Tenant or the EDA shall be in default. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that the EDA commences correction efforts within thirty (30) days and completes same within a reasonable time period. In the event of a default by the EDA, the Tenant will be entitled to any and all relief under law, including, but not limited to the right to terminate the lease and/or the right to undertake such repairs and subtract the costs thereof from the next rental payment(s) due.

## **18. INDEMNIFICATION OF EDA**

a. The EDA shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or the appurtenances thereto, or for any injury or damage to the Premises, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or from steam, gas, electricity, water, rain, or snow that may leak into,

issue, or flow from any part of the Premises from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean-up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Premises i) by the EDA; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the EDA, after notice, to enter and inspect the Premises are made for the purpose of enabling the EDA to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the EDA is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant shall indemnify and hold the EDA harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

- i. Any material breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed, and performed, and
- ii. Claims of every kind or nature, arising out of the use and occupancy of the Premises by the Tenant, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by the Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises.

## **19. LIMITATION OF EDA'S OBLIGATION**

a. The EDA shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the EDA or its agents in their activities, making repairs, alterations, additions, or improvements in or to a portion of the Premises except by reason of the negligence of the EDA or its agents.

b. Tenant shall have the exclusive right to conduct brewery operations at the Premises and the EDA covenants and agrees that it will not rent or lease any other EDA property at the Marina to any other tenant for use as a brewery.

## **20. RESERVED RIGHTS**

The EDA explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease Agreement:

a. To change the name or street address of the Premises without liability of the EDA to the Tenant.

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Premises, for the purpose of

altering, renovating, remodeling, repairing, or otherwise preparing the Premises for re-occupancy.

c. To enter the Premises upon reasonable advance notice for the making of inspections, repairs, alterations, improvements or additions at or to the Premises as the EDA may deem necessary or desirable, and for any purpose whatsoever related to the safety, protection, preservation, or improvement of the Premises or of the EDA's interest in the Premises.

d. At any time or times the EDA, either voluntarily or pursuant to governmental requirement, may, at the EDA's own expense make repairs, alterations, or improvements in or to the Premises or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Premises, unless there is an unforeseen emergency or the nature of the repair, alteration, or improvement makes such temporary closure before 5:00 p.m. necessary. The EDA shall make reasonable efforts to ensure that such repairs will not interfere with the Tenant's ability to conduct business, provide advance reasonable notice and to prosecute such repairs as quickly as possible so as to minimize any interference with the Tenant's quiet enjoyment.

e. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Premises, including without limitation selling or developing all or portions of the Premises or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

f. Relocate the Tenant from the Building into comparable space within the Marina at the EDA's sole option and expense. The EDA shall give the Tenant ninety (90) days notice prior to relocation and shall coordinate with the Tenant to avoid unreasonable disruption to the Brewery. The EDA shall not be liable for, and the Tenant expressly waives, any damages incidental to such relocation.

The EDA may exercise any or all of the foregoing rights hereby reserved by the EDA without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of rent, unless such interruption is prolonged and is a result of the EDA's negligence, or other compensation, and such acts shall have no effect upon this Lease.

## **21. MISCELLANEOUS**

a. The failure of the either party to enforce in any one or more instances any term, condition, rule, regulation, or covenant as to which the other party shall be guilty of a breach or be in default, shall not be deemed to waive the right of the party to enforce the same or any subsequent breach or default notwithstanding that it had knowledge of such breach or default previously or at the time of the receipt of any rent or other sums by the EDA, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the EDA of checks or cash from persons other than the Tenant shall in no event evidence consent of the EDA to any assignment or sub-lease by the Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by either party unless such waiver or modification or release or surrender be in writing and signed by the other party.

b. Each provision hereof shall bind and inure to the benefit of the EDA and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the EDA's successors and assigns; if the Tenant is a corporation, its successors; and in the event that EDA consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

## **22. HOLDING OVER**

If the Tenant shall hold over after the Final Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the EDA Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 2. The increased Rent during such holding over is intended to compensate the EDA partially for losses, damages, and expenses, including frustrating and delaying the EDA's ability to secure a replacement tenant. If the EDA loses a prospective tenant or purchaser because the Tenant fails to vacate the Premises on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the EDA can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

## **23. SEVERABILITY**

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

## **24. JOINT VENTURE DISCLAIMER**

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

## **25. SUCCESSORS AND ASSIGNS**

All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors, and assigns.

## **26. APPLICABLE LAW, CONSTRUCTION, ATTORNEY'S FEES**

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia. If the EDA and Tenant 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.

## **27. NOTICES**

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to parties hereto at the respective addresses set forth below or any other address that may be specified by the Parties.

### **Legal Notice Address for EDA:**

James City County EDA  
Attn: Secretary  
P.O. Box 8784  
Williamsburg, VA 23187-8784  
yesjcc@jamescitycountyva.gov

### **With Copy to:**

County Attorney  
P.O. Box 8784  
Williamsburg, VA 23187-8784

### **Tenant:**

Billsburg Brewery, Inc.  
Attn: Dave Baum  
205 Kingswood Drive  
Williamsburg, VA 23185  
dbaum23188@gmail.com

In each case when this Lease calls for an approval by the EDA, unless otherwise specified herein, such approval may be granted by the Director of the EDA or his designee and shall not require action by the EDA.

## **28. AUTHORITY OF PARTIES**

Each individual executing this lease on behalf of the Tenant, a corporation, represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

## **29. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT**

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal and RFP shall be resolved in favor of the Lease Agreement, the RFP and then the Proposal.

**30. AMENDMENTS**

This Lease may be amended by signed, written agreement of the Parties or their successors in interest.

**31. FINAL UNDERSTANDING**

This Lease contains all agreements of the parties with respect to any matter mentioned herein.

**SIGNATURES FOLLOW ON NEXT PAGE**

WITNESS the following signatures:

**ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY**

Robin Carson

Robin Carson

Its: Vice Chairman

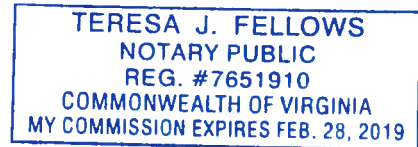
COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

The foregoing Lease Agreement was acknowledged before me this 2nd day of August, 2016, by Robin Carson, Vice Chairman of the James City County Economic Development Authority.

Teresa J. Fellows  
NOTARY PUBLIC

My Commission expires: 2-28-19  
Notary Registration No. 7651910



APPROVED AS TO FORM:

M. Allen

EDA Attorney



**BILLSBURG BREWERY, INC.**



Name: DAVID BAUM

Its: PRESIDENT, BILLSBURG BREWERY, INC.

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF James City, to-wit:

The foregoing Lease Agreement was acknowledged before me this 1<sup>st</sup> day of August, 2016, by David Baum, as President of Billsburg Brewery, Inc.

  
NOTARY PUBLIC

My Commission expires: 2-28-19  
Notary Registration No. 7651910

TERESA J. FELLOWS  
NOTARY PUBLIC  
REG. #7651910  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES FEB. 28, 2019

**Legend**

□ Parcels

Feet



**Title: Exhibit A**

**Date: 7/22/2016**

*DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records information, and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be.*

**JAMES CITY COUNTY ECONOMIC DEVELOPMENT AUTHORITY**

**MARINA DEED OF LEASE**

THIS DEED OF LEASE, entered into this 9<sup>th</sup> day of December, 2016, by and between the Economic Development Authority of James City County, Virginia a political subdivision of the Commonwealth of Virginia (the "EDA"), and Billsburg Brewery, Inc., a Virginia stock corporation (the "Tenant") (each a "Party" and together, the "Parties").

**WITNESSETH:**

WHEREAS, the EDA has leased a portion of 2054 Jamestown Road, Williamsburg, Virginia 23185, further identified as James City County Tax Map Parcel Number 4640100012 (in its entirety referred to as the "Marina") from the County of James City, Virginia (the "County"); and

WHEREAS, the EDA advertised a Request for Proposal, published December 12 and 16, 2015 (the "RFP") to establish a commercial use at the Marina. The Tenant submitted a proposal dated January 8, 2016 (the "Proposal"). The RFP and Proposal are incorporated herein by reference.

WHEREAS, the EDA determined that the Proposal was responsive to the RFP and further determined that the Proposal was acceptable; and

WHEREAS, on August 2, 2016, the EDA leased the second story of an existing building located at the Marina to the Tenant, which prior lease contemplated the construction of a warehouse facility at the Marina to be occupied by the Tenant; and

WHEREAS, on December 8, 2016, the EDA held a meeting and, by a 4 to 0 vote, adopted a resolution authorizing the Chairman or Vice Chairman to execute this Lease Agreement with the Tenant.

NOW, THEREFORE, in consideration of the below stated rent and other terms and conditions agreed to in this Deed of Lease, hereinafter referred to as the "Lease," the EDA does hereby lease to Tenant, and Tenant does hereby rent from the EDA, the following interests in the described lots, pieces or parcels of land, together with all improvements thereon to-wit:

An exclusive leasehold interest in a portion of the Marina, being the area shown in red on the site plan titled, "JCC MARINA WAREHOUSE PREPARED FOR JAMES CITY COUNTY ECONOMIC DEVELOPMENT, JAMES CITY COUNTY, VIRGINIA," which is attached to and made a part of this Lease as **Exhibit A**; and,

A non-exclusive leasehold interest in the area shown in blue on Exhibit A (the "Common Area") (all together with the exclusive interest referred to as, the "Premises");

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.

TO HAVE AND TO HOLD said land and improvements thereon and the privileges and appurtenances thereunto belonging unto the Tenant, its permitted successors and assigns, for the term hereinafter provided, and upon all of the following terms and conditions, to which the parties mutually covenant and agree:

## **1. WAREHOUSE CONSTRUCTION**

This Lease is executed by the Parties with the understanding that the EDA intends to construct a warehouse facility of up to four thousand (4,000) square feet on the Premises as generally shown on Exhibit A, and consistent with County IFB # 17-11265 (with any reasonable alterations) (the "Building"). The Building shall be suitable for alteration by the Tenant at the Tenant's cost to satisfy its needs as set forth in the Proposal. If, for any reason, site work for the Building has not begun by March 1, 2017, either Party may terminate this Lease by written notice to the other Party.

## **2. TERM**

a. This Lease shall commence upon the signature of all parties (the "Commencement Date"). The EDA shall give the Tenant possession of the Building upon the issuance of a Certificate of Completion for the Building (the "Possession Date"). Rent payments as defined in Section 3 shall commence upon the earlier occurrence of (1) September 1, 2017, or (2) issuance of the final Certificate of Occupancy for the Building (the first occurrence referred to as the "Rent Commencement Date"). The executory period between the Commencement Date and the Rent Commencement Date shall be referred to as the "Pre-Rent Term." If the EDA, for any reason whatsoever, cannot deliver possession of the Building to the Tenant on the Possession Date, then this Lease shall not be affected or impaired in any way except as herein expressly provided and the EDA shall not be liable to the Tenant for any loss or damage resulting therefrom or caused thereby. In the event the EDA cannot deliver the Building within 120 days of the Possession Date, the Tenant has the right in its sole discretion to terminate this Lease with no further liability. Unless expressly provided otherwise herein, rent shall commence on the Rent Commencement Date.

b. The initial term of this Lease shall be for ten (10) years and shall end on the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. Provided the Tenant is not in default, this Lease shall automatically renew for up to two (2) additional terms of five (5) years each (each a "Renewal Term"). The Tenant may give notice of intent to terminate this Lease upon written notice to the EDA at least one hundred and eighty (180) days prior to the expiration of the Initial Term or any Renewal Term.. The Initial Term in conjunction with any Renewal Term of this Lease is referred to as the "Term." The expiration of this Lease at the end of the Term shall be referred to as the "Expiration Date." Subsequent renewals are permitted upon mutual written agreement between the parties.

## **3. RENT**

During the first year of the Initial Term of this Lease, Tenant covenants to pay a base annual rental to the EDA equal to Sixty Thousand Dollars (\$60,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand



Dollars (\$5,000) ("Rent"). Rent shall increase by three percent (3%) for each of the first five (5) subsequent years of the Initial Term. Rent for each of the remaining four years of the Initial Term shall be equal to a base annual rent of Seventy Thousand Dollars (\$70,000), which shall be payable in equal monthly installments in advance on the first day of each month in the amount of Five Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$5,833.33). Rent shall increase five percent (5%) for each Renewal Term. Rent shall be paid according to the following schedule:

YEAR	ANNUAL	MONTHLY
1	\$60,000.00	\$5,000.00
2	\$61,800.00	\$5,150.00
3	\$63,654.00	\$5,304.50
4	\$65,563.62	\$5,463.64
5	\$67,530.53	\$5,627.54
6	\$69,556.44	\$5,796.37
7	\$70,000.00	\$5,833.33
8	\$70,000.00	\$5,833.33
9	\$70,000.00	\$5,833.33
10	\$70,000.00	\$5,833.33
11	\$73,500.00	\$6,125.00
12	\$73,500.00	\$6,125.00
13	\$73,500.00	\$6,125.00
14	\$73,500.00	\$6,125.00
15	\$73,500.00	\$6,125.00
16	\$77,175.00	\$6,431.25
17	\$77,175.00	\$6,431.25
18	\$77,175.00	\$6,431.25
19	\$77,175.00	\$6,431.25
20	\$77,175.00	\$6,431.25

The rent for any terms subsequent to the Final Expiration Date of this Lease shall be as mutually agreed upon by the parties.

The Tenant shall pay Rent to the EDA, on or before the first day of each calendar month during the Term, without previous demand or notice therefore by the EDA and without set-off or deduction. In the event that Rent initially becomes due on a day other than the first of the calendar month, that payment shall be prorated and the subsequent Rent payment shall be due on the first of the following month. Notwithstanding anything contained herein to the contrary, the Tenant's obligation to pay Rent under this Lease is completely separate and independent from any of the EDA's obligations under this Lease. For each monthly Rent payment the EDA receives after the tenth (10th) day of the month, the EDA shall be entitled to, in addition to all other remedies provided in this Lease, a late charge in the amount of five percent (5%) of all Rent due for such month. Rent shall be paid to the following:

James City County Economic Development Authority  
Account # 021-309-5915  
P.O. Box 8784  
Williamsburg, VA 23187-8784

#### **4. TAXES AND ASSESSMENTS**

The Tenant shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof. The Tenant shall be responsible for the real estate taxes assessed on the Premises. In the event any or all of the taxes for which Tenant is responsible shall be assessed and taxed to the EDA, the Tenant shall pay to the EDA its share of such taxes within ten (10) days after delivery to the Tenant by the EDA of a statement in writing setting forth the amount of such taxes applicable to the Tenant.

#### **5. USE OF PREMISES**

a. The Tenant shall be permitted to use the Premises for the uses described in the Proposal (the "Brewery"), which includes any uses permissible under ABC laws for a brewery, and those that may be approved by a majority vote of the EDA, subject to the following provisions:

- i. The Tenant must obtain the EDA's permission prior to any proposed change in the size or scope of the Brewery or prior to establishing any new use at the Premises.
- ii. The Tenant shall never make any use of the Premises which is in violation of any federal, state, or local laws, rules, or regulations, whether now existing or hereafter enacted.
- iii. The Tenant may not make any use that is or may be a nuisance or trespass or makes such insurance unavailable to the EDA on the Premises.
- iv. The Tenant shall not make exclusive use of the Common Area without prior written agreement of the EDA.

b. The EDA shall have the option to reserve and use the Premises without cost up to three (3) times per year subject to the following conditions:

- i. No such use shall take place on a day that the Brewery is not in operation without prior written agreement by the Tenant.
- ii. Use of the Premises shall be requested by the EDA at least sixty (60) days prior to the date of use.
- iii. All good and services provided by the Tenant shall be agreed on and compensated independent of this Lease.

c. The EDA shall have use of the Common Area as the EDA sees fit. Nothing in this Lease shall restrict the EDA's use of the Common Area

#### **6. CONDITION OF THE PREMISES**

a. The Tenant's occupancy and use of the Premises shall be the Tenant's representation to the EDA that the Tenant has examined and inspected the same, finds the Premises to be satisfactory for the Tenant's intended use, and constitutes the Tenant's acceptance of the Premises "AS IS." The Tenant shall deliver at the end of this Lease each and every part of the Premises in good repair and condition, ordinary wear and tear and damage by insured casualty excepted. The delivery of a key or other such tender of possession of the Premises to the EDA or to an employee of the EDA prior to the expiration of the Term shall not operate as a termination of this Lease or a surrender of the Premises except upon written notice by the EDA in accordance with the terms hereof. The Tenant shall: (i) keep the Premises in good order; (ii) make repairs and replacements to the Premises as needed because of the Tenant's or its employees' or invitees' use, misuse, or primary negligence; and (iii) not commit waste.

b. Upon termination of this Lease or vacation of the Premises by the Tenant, the Tenant shall restore the Premises to the same condition as existed at the Rent Commencement Date at Tenant's sole expense; ordinary wear and tear, alterations and improvements approved pursuant to Section 10 of this Lease, and damage by insured casualty only excepted. The EDA, however, may elect to require the Tenant to leave non-approved alterations or improvements performed by or for the Tenant unless at the time of such alterations the EDA agreed in writing that such alterations could be removed upon the expiration or termination of this Lease, or upon Tenant's vacation of the Premises.

## **7. SIGNS**

The Tenant may not erect, install, or display any sign or other advertising material on or about the Premises without the prior written consent of the EDA, or in conflict with any state or local laws. The Tenant shall be solely responsible for the cost to install and maintain any signs erected on the Premises.

## **8. ASSIGNMENT, SUBLETTING AND MORTGAGING**

The Tenant shall not assign this Lease or sublet or place any mortgage upon the Premises, in whole or in part, without the EDA's prior written consent. If consent to assign or sublease is obtained, no such assignment or sublease shall in any way release or relieve the Tenant from any of its covenants or undertakings contained in this Lease, and in all cases under this paragraph, the Tenant shall remain liable on this Lease during the Term. The Tenant's request for consent to any subletting or assignment of this Lease shall be accompanied by a written statement setting forth the details of the proposed sublease or assignment and any other information the EDA deems relevant. The EDA shall have the right to (a) withhold consent; (b) grant consent; or (c) terminate this Lease as of the effective date of such sublease or assignment. After ten (10) days written notice to the Tenant of the EDA's intention to terminate, the Tenant may withdraw its request for consent and this Lease shall continue with its terms. In the event the Tenant does not withdraw its request for consent to sublet or assign, the EDA may elect to enter into a direct lease with the proposed assignee or subtenant. The Tenant shall be liable for reasonable expenses incurred by the EDA in connection with an assignment, subletting, or mortgage of the Premises.

## **9. UTILITIES**

During the Term of this Lease, water and sewer services shall be in the name of the EDA or the County and the Tenant shall reimburse the EDA for all charges within ten (10) days of the EDA giving notice that the same have become due. All other utility services shall be contracted for directly by the Tenant. The EDA shall not be liable for any interruption or failure in the supply of any utility to the Premises and no abatement of Rent shall be allowed to the Tenant as a result thereof, unless such interruption is prolonged and is a result of the EDA's negligence, nor shall the Lease or any of the EDA's obligations be in any way affected thereby. The Tenant shall be responsible for the extension or expansion of all utilities necessary to serve any improvements made to the Premises pursuant to Section 10 of this Lease.

## **10. IMPROVEMENTS, REPAIRS, ALTERATIONS, AND MAINTENANCE**

a. All maintenance, upkeep, and repair ("Maintenance") of the Premises shall be performed or contracted for by the Tenant at its sole expense, excepting structural repairs of the Building covered by any warranty held by the EDA. The Tenant shall not be reimbursed for any Maintenance unless otherwise agreed to in writing by the EDA. The EDA shall immediately notify the Tenant in writing of any observed site deficiencies. The Tenant shall have thirty (30) calendar days from the day of receipt of written notification to correct the deficiency. E-mail shall constitute "written notification." If the deficiency is not corrected within this time period, the EDA may procure the required goods or services from other sources and hold the Tenant responsible for any resulting additional purchase, staff, and administrative costs limited to 10% of the repairs made by the EDA. This remedy shall be in addition to other remedies which the EDA may have.

b. The EDA shall participate in any repair to the extent that such repair is covered by a warranty held on the Building. The EDA covenants and agrees that it shall comply with the maintenance obligations of its lease with the County. Neither the EDA nor the County shall be liable (and shall assess the costs thereof to the Tenant) when any repair or replacement of the Premises is made necessary by the negligent or willful acts or omission of the Tenant, its agents, invitees, or employees. The EDA shall not be liable for or have any obligation to repair or replace any improvements made to the Premises by the Tenant.

c. The Tenant may make improvements to the Building using its own resources. The Tenant may make non-structural alterations, additions, or improvements to the Building not exceeding Five Thousand Dollars (\$5,000) in cost ("Minor Improvement") without the prior written consent of the EDA. Any external Minor Improvement shall be a neutral or muted earth tone color that complements the Marina. Other than routine maintenance, the Tenant shall not make any alterations of, additions to, or changes to the Building which (1) exceed five thousand dollars (\$5,000) in cost, or (2) are structural ("Major Improvement") without the prior written consent of the EDA, such consent not to be unreasonably withheld. Minor Improvements that, at the EDA's sole discretion, aggregate to a Major Improvement, shall be treated as a Major Improvement under this Lease. All such Minor Improvements and Major Improvements (collectively, "Improvements") shall meet local, state, and federal requirements. The Tenant shall perform all work required to improve the Building to a finished condition ready for the conduct of the Tenant's business. The Tenant shall provide construction drawings to the EDA for each proposed Improvement and shall provide the EDA with a cost estimate for each. The EDA shall consider each such proposed Major Improvement and may, at its sole discretion, approve, conditionally approve, or deny each such proposed Major Improvement or any portion thereof. Upon completion of any Improvement, the Tenant shall provide the EDA with a set of as-built construction plans. Equipment and machinery shall not be deemed Improvements under this Lease.

d. The Tenant may, with the prior written consent of the EDA, make improvements to the landscaping on the Premises, 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 EDA in writing along with plans illustrating the location and type of plantings and improvements proposed. Such plans shall be submitted by the EDA to the County for review and approval by the appropriate County departments. The EDA shall, in writing, approve, conditionally approve, or deny the Landscape Improvements within forty-five (45) days of receipt of the request and illustrative plans.

e. The Tenant 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 Tenant. Should any claim of lien or other lien be filed against the Premises by reason of any act or omission of the Tenant or any of the Tenant's agents, employees, contractors, or representatives, then the Tenant



shall cause the same to be canceled and discharged of record by bond or otherwise within forty-five (45) days after the filing thereof. The EDA shall give the Tenant notice of any lien filed against the Premises for which the EDA has actual notice. Should the Tenant fail to discharge such lien within such forty-five (45) day period, then the EDA may discharge the same, in which event the Tenant shall reimburse the EDA, on demand, the amount of the lien or the amount of the bond, if greater, plus all reasonable administrative costs incurred by the EDA in connection therewith. The remedies provided herein shall be in addition to the other remedies available to the EDA under this Lease or otherwise. The Tenant 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 EDA, or any interest of the EDA 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 EDA IN AND TO THE PREMISES.

f. Upon expiration or earlier termination of this Lease, the Tenant's leasehold interest in the Premises shall terminate and title to the Improvements shall automatically pass to, vest, belong to, and become the property of the EDA. The Tenant shall, if the EDA shall deem it appropriate, execute any further documents to confirm this transfer of title to the EDA with cost of charge to the EDA. The Tenant shall be responsible for the removal of its personal property, upon expiration or earlier termination of this Lease, provided that the Tenant shall be responsible for the cost of repair of any damage caused by the removal. The EDA and Tenant shall negotiate in good faith with regard to the removal of equipment and machinery and/or the sale of same to the EDA.

g. The Tenant shall, on the last day of the term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Premises and equipment to the EDA, broom-clean, including all Improvements, alterations, rebuildings, replacements, changes, or additions placed by the Tenant thereon, in as good condition and repair as the same were in at the commencement of the original term, normal wear and tear and damage by insured casualty excepted.

## **11. EMINENT DOMAIN**

If all of the Premises, or such part thereof as will make the same unusable for the purposes contemplated by this Lease, be taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor, and Rent shall be adjusted between the EDA and the Tenant as of such date. If only a portion of the Premises is taken and the Tenant can continue use of the remainder, then this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking.

The EDA shall be entitled to the entire proceeds of any condemnation award; provided, however, that Tenant may pursue a separate claim for the book value less depreciation of Improvements placed on the Premises by Tenant at its own expense, as shown on Tenant's most recent federal income tax return or as certified as a book value amount by Tenant, adjusted for subsequent additions and depreciation to the date of such condemnation, plus amounts, to compensate Tenant for expenses special to Tenant provided the foregoing does not reduce the EDA's award.

## **12. ACCESS TO PREMISES**

a. The EDA shall have the right, upon twenty four (24) hours prior notice to the Tenant (except in the case of an emergency, in which event the EDA shall have the right to enter the

Premises as the EDA reasonably deems necessary), either itself or through its authorized agents, to enter the Premises (i) for the purposes of inspection, (ii) to make repairs, alterations or changes as EDA deems necessary after the Tenant has neglected its obligations under this Lease, and (iii) to show the Premises to prospective lessees, mortgagees, and/or purchasers. The EDA shall have the right, either itself or through its authorized agents, to place signs in conspicuous places about the Premises and to otherwise advertise the Premises for sale or rent, and to enter the Premises at all reasonable times for inspection to show prospective lessees, mortgagees, and/or purchasers if within one hundred eighty (180) days prior to the Expiration Date as extended by any exercised option for a Renewal Term.

b. The Tenant, its agents, employees, invitees, and guests, shall have the right of ingress and egress to the Common Area and public areas of the Marina, provided the EDA and the County may regulate and control such access, or as needed for making repairs and alterations.

c. The EDA shall furnish the Tenant with a key to the Building. All keys to the Building shall remain the property of the EDA. No additional locks shall be allowed on any door of the Building without the EDA's written permission, which shall not be unreasonably withheld. Notwithstanding the foregoing, the Tenant may install locks on the doors of individual offices within the Building, provided that the Tenant shall provide a copy of any such keys to the EDA. The Tenant shall supply the EDA with a copy of any keys necessary to access the Building. Upon termination of this Lease, the Tenant shall surrender to the EDA all keys to the Building, and give to the EDA the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Building.

### **13. HAZARDOUS SUBSTANCE**

a. The Tenant shall not knowingly cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Premises by the Tenant, the Tenant's agents, employees, or contractors without the prior express written consent of the EDA.

b. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local government, the Commonwealth of Virginia or the United States Government. "Hazardous Substance" also includes any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local law or becomes regulated by any federal, state or local authority. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorinated biphenyl's (PCB's), solvents, printing inks, pesticides, solvents, and leads. "Hazardous Substance" excludes petroleum products when said petroleum products are stored and dispensed in accordance with all federal, state, and local laws and regulations. Notwithstanding the foregoing, ordinary items such as propane, paint, cleaning supplies, etc. shall not be deemed Hazardous Substances.

c. The Tenant shall provide the EDA, in a timely manner, a Safety Data Sheet ("SDS") upon the EDA's request. Said SDS shall describe the chemical properties of any hazardous substances which may be used, stored, generated, or disposed of on or in the Premises.

### **14. INSURANCE**

a. At all times during the Lease, at its own cost and expense, the Tenant shall keep or cause to be kept on all Improvements, alterations, renovations, replacements, substitutions,

changes, equipment, fixtures, motors, and machinery owned or leased by the Tenant and installed in or used in connection with the Premises, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered), flood and such other hazards, casualties, risks, and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value") and sufficient so that no co-insurance penalty shall be invoked in case of loss. Such Full Insurable Value shall be determined from time to time at the request of the EDA (no more often than once every year) but at the expense of the Tenant by the fire insurance company carrying the highest amount of fire insurance on the Premises or its agent, or by an appraiser selected by the Tenant that is experienced in insurance appraisals who is approved in writing by the EDA which approval shall not be unreasonably withheld. The failure of the EDA to request such appraisal shall not release the Tenant from its obligations hereunder.

b. At all times during the Lease, at its own cost and expense, the Tenant shall provide and keep in force comprehensive general liability insurance in standard form, protecting the Tenant and naming the EDA as an additional insured, on a primary basis with no participation required by the EDA's liability policy, against personal injury, including without limitation, products and completed operations, personal and advertising injury, bodily injury, death, or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. If the Tenant maintains broader coverage and/or higher limits than the minimums shown above, the EDA requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the EDA. The EDA reserves the right to amend these limits from time to time during the course of the Lease. All such policies shall cover the entire Premises and any improvements thereon, including parking, common areas, means of access, and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Lease when the Tenant is engaged in the construction or reconstruction of any Improvement, or repairs thereof, at its own cost and expense, the Tenant shall provide and keep in force for the benefit of the EDA and the Tenant, "all risk" builders risk insurance on the Premises and all Improvement(s) under construction naming the EDA as a loss payee on the policy

d. At all times during the Lease, at its own cost and expense, the Tenant shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of the Tenant in strict compliance with the laws of the Commonwealth of Virginia in the following minimum amounts: Coverage A - Statutory, Coverage B - \$100,000/\$100,000/\$500,000.

e. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the EDA; ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then-current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof); iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of the

Tenant therein, by any act, omission or neglect of the Tenant (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises. If requested by the EDA, copies of all insurance policies required by this Lease shall be delivered by the Tenant to the EDA. All insurance policies shall be renewed by the Tenant and proof of such renewals, including appropriate endorsement page(s), accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the EDA, at least twenty (20) days prior to their respective expiration dates. All self-insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the EDA.

f. The EDA and the Tenant mutually release and discharge each other (as well as the officers, directors, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure, equipment, or other real or personal property of the other, or any resulting loss of income or business, that may arise from a fire or other casualty or is otherwise covered by insurance. The above releases also shall apply to any third party, including any insurance company, claiming through or under a party as a result of a right of subrogation. All casualty insurance policies required to be maintained under this Lease shall contain "waiver of subrogation" clauses to carry out these release provisions.

## **15. DAMAGE TO BUILDING**

If, by reason of such fire or other casualty, the Premises is rendered wholly untenable, the Rent and other charges payable by the Tenant shall be fully abated, or if only partially damaged, such rent and other charges shall be abated proportionately as to that portion of the Premises rendered untenable, in either event (unless the Lease is terminated, as aforesaid) from the date of such casualty until (i) occupancy of the Premises by Tenant; (ii) the date the EDA has the Premises ready for occupancy by the Tenant provided the Tenant has been given at least fourteen (14) days' notice of same, or (iii) the date the EDA could have had the Premises ready had there been no delays attributable to the Tenant. The Tenant shall continue the operation of the Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management. However, if such damages or other casualty shall be caused by the negligence or other wrongful conduct of the Tenant or of the Tenant's subtenants, licensees, contractors, or invitees, or their respective agents or employees, there shall be no abatement of Rent or other charges. Notwithstanding the foregoing, the Tenant may elect to obtain loss of rents insurance coverage covering a period of no less than twelve (12) months, in which event the preceding sentence stating that there shall be no abatement of rent or other charges shall not be applicable. If the Tenant elects to obtain such insurance coverage, the policy must be issued by an insurance carrier reasonably acceptable to the EDA, and the Tenant shall deliver to the EDA a certificate of insurance evidencing the required insurance coverage, which shall be renewed and a renewal certificate provided to the EDA no later than thirty (30) days prior to the expiration date of such insurance policy. Except for the abatement of the Rent and other charges hereinabove set forth, the Tenant shall not be entitled to, and hereby waives all claims against the EDA for any compensation or damage for loss of use of the whole or any part of the Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. Notwithstanding the foregoing provisions, if damage or loss occurs to the Premises during the final two (2) years of the Initial Term or any Renewal Term, where the costs to repair such damage or loss exceeds twenty-five percent (25%) of the replacement cost of the Premises, then in that event the EDA and/or the Tenant may, at its

respective election, terminate this Lease upon written notice to the other party within sixty (60) days of the date such damage or loss occurs. In the event the EDA is repairing the Premises, it shall promptly undertake such repairs and follow them through to a conclusion.

## **16. LANDLORD'S LIEN, PROPERTY OF TENANT**

All trade fixtures, personal property, equipment, inventory and merchandise belonging to the Tenant which are, or may be, put into the Premises during the Term, whether exempt or not from sale under execution and attachment under the laws of Virginia, shall at all times be subject to, and the Tenant hereby grants to the EDA, a first priority lien and security interest in favor of the EDA, for the purpose of securing all Rent, additional rent, or other sums which may become due to the EDA from the Tenant under this Lease. For the purposes of the Tenant receiving financing, the EDA will, upon request by the Tenant, subordinate its lien priority to a Purchase Money Security Interest. Upon default or breach of any covenants of this Lease, the EDA shall have all remedies available under the Uniform Commercial Code enacted in Virginia including, but not limited to, the right to take possession of the above mentioned property and dispose of it by sale in a commercially reasonable manner. The Tenant hereby agrees to execute financing statements and continuation statements upon a request to do so by the EDA for the purpose of recording same in the appropriate public records in order to perfect the EDA's security interest, serving notice to third parties of the security interest herein granted. Upon the failure of the Tenant to so execute upon request, the Tenant does hereby appoint the James City County Attorney's Office as Tenant's attorney in fact for said purpose. The Tenant agrees to pay, as additional rent, all filing fees, taxes and other costs and expenses incurred by the EDA in recording such financing statements.

The Tenant shall timely pay any and all taxes levied or assessed against or upon the Tenant's equipment, fixtures, furniture, leasehold improvements, and personal property located in the Premises. Provided that the Tenant is not in default hereunder, the Tenant may, prior to the expiration date of the Lease, remove all fixtures and equipment, which it has placed in the Premises; provided, however, that the Tenant shall, at its sole cost and expense, repair all damages caused by such removal. If the Tenant does not remove its property from the Premises upon termination (for whatever cause) of this Lease, such property shall be deemed abandoned by the Tenant; and the EDA may dispose of the same in whatever manner the EDA may elect without any liability to the Tenant.

## **17. DEFAULT**

a. The happening of any of the following enumerated events shall constitute a default for which the EDA, in addition to other rights or remedies it may have, shall have the immediate right of re-entry without service of notice or resort to legal process for (a) failure of the Tenant to pay any rent due hereunder within ten (10) days after written notice to the Tenant of such failure; (b) vacation of the Premises by the Tenant or advertising by the Tenant in any manner that would indicate or lead the public to believe that the Tenant was going out of business or intending to vacate the Premises, except for periods of time during the Pre-Rent Term that Tenant is performing renovations; (c) the filing by, on behalf of or against the Tenant, of any petition or pleading to declare the Tenant insolvent for which Tenant has not moved to dismiss same within thirty (30) days; (d) the inability of the Tenant to pay its debts or meet its obligations under the laws of the United States or any state, or a receiver of the property of the Tenant is appointed, or the levy of execution or other taking of the leasehold interest of the Tenant by process of law or otherwise in satisfaction of any judgment, debt or claim against the Tenant; or (e) failure of the Tenant to

perform any of the other terms, conditions, or covenants of this Lease provided that the EDA has provided thirty (30) days written notice and Tenant has failed to correct same. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that Tenant commences correction efforts within thirty (30) days and completes same within a reasonable time period as approved in writing by the EDA.

b. Should the EDA elect to re-enter and terminate the Tenant's use of the Premises as herein provided, or should the EDA take possession pursuant to legal proceedings or pursuant to any provisions under law, the EDA may either terminate this Lease or it may, from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent and upon such other terms and conditions as the EDA, in its reasonable discretion may deem advisable. Upon each such re-letting, all rent received by the EDA from such re-letting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the EDA; second, to the payment of any costs and expenses for such repossession and re-letting, including brokerage fees and attorney's fees and costs of alterations and/or repairs; third, to the payment of Rent due and unpaid hereunder; and fourth, the residue, if any, shall be held by the EDA and applied in payment of future Rent as the same may become due and payable hereunder. If the Premises is not re-let as aforesaid, or if the rent received for such re-letting during any month be less than that to be paid during the month by the Tenant to the EDA hereunder, the Tenant shall promptly pay the rental due hereunder or any such deficiency as the case may be to the EDA. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises by the EDA shall be construed as an election on its part to terminate this Lease unless a written notice of such election be given to the Tenant or unless the termination be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, the EDA may at any time thereafter elect to terminate this Lease for such previous breach. The Tenant shall pay to the EDA all expenditures incurred by them in any enforcement of the provisions of this Lease including reasonable fees of attorneys and others employed by the EDA.

c. Except as expressly herein provided to the contrary, any amount due to the EDA not paid when due shall bear simple interest at the legal judgment rate.

d. All of the foregoing remedies shall be in addition to any other rights the EDA may have at law or in equity, and waiver of one default shall not be deemed to be a waiver of any subsequent default.

e. Notwithstanding the foregoing, the EDA shall make reasonable efforts to mitigate damages.

f. In the event that the EDA fails to perform any duty under this Lease, it will make repairs within thirty (30) days of notice from Tenant or the EDA shall be in default. In the event the time to correct cannot be reasonably completed within thirty (30) days, it shall not be considered a default provided that the EDA commences correction efforts within thirty (30) days and completes same within a reasonable time period. In the event of a default by the EDA, the Tenant will be entitled to any and all relief under law, including, but not limited to the right to terminate the lease and/or the right to undertake such repairs and subtract the costs thereof from the next rental payment(s) due.

## **18. INDEMNIFICATION OF EDA**



a. The EDA shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or the appurtenances thereto, or for any injury or damage to the Premises, or to any property, whether belonging to the Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises, including defects in construction, latent or otherwise; provided, however, that the Tenant shall not be responsible for clean-up of any Hazardous Substances (as defined herein), to the extent that such Hazardous Substances were introduced to the Premises i) by the EDA; or ii) prior to the Commencement Date and not the result of actions by the Tenant or its agents, employees, or independent contractors. The provisions of this Lease permitting the EDA, after notice, to enter and inspect the Premises are made for the purpose of enabling the EDA to become informed as to whether the Tenant is complying with the agreements, terms, covenants and conditions thereof, but the EDA is under no obligation to perform such acts as the Tenant shall fail to perform.

b. The Tenant shall indemnify and hold the EDA harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

1. Any material breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed, and performed; and
2. Claims of every kind or nature, arising out of the use and occupancy of the Premises by the Tenant, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by the Tenant, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises.

## **19. LIMITATION OF THE EDA'S OBLIGATION**

a. The EDA shall have no liability to the Tenant by reason of any inconvenience, annoyance, or injury to business arising from the EDA or its agents in their activities, making repairs, alterations, additions or improvements in or to a portion of the Premises except by reason of the negligence of the EDA or its agents.

b. Tenant shall have the exclusive right to conduct Brewery operations at the Premises and the EDA covenants and agrees that it will not rent or lease any other EDA property at the Marina to any other tenant for use as a brewery.

## **20. RESERVED RIGHTS**

The EDA explicitly reserves the following rights in addition to any other rights otherwise granted or reserved in this Lease:

a. To change the name or street address of the Premises without liability of the EDA to the Tenant.

b. To enter during the last ninety (90) days of the Term, provided the Tenant shall have removed all or substantially all of the Tenant's property from the Premises, for the purpose of altering, renovating, remodeling, repairing, or otherwise preparing the Premises for re-occupancy.

c. At any time or times the EDA, either voluntarily or pursuant to governmental requirement, may, at the EDA's own expense make repairs, alterations, or improvements in or to the Premises or any part thereof, and during operations, may close entrances, doors, corridors, or other facilities provided the Tenant shall have access to the Premises, unless there is an unforeseen emergency or the nature of the repair, alteration, or improvement makes such temporary closure before 5:00 p.m. necessary. The EDA shall make reasonable efforts to ensure that such repairs will not interfere with the Tenant's ability to conduct business, provide advance reasonable notice and to prosecute such repairs as quickly as possible so as to minimize any interference with the Tenant's quiet enjoyment.

d. To do anything that is appropriate or desirable to maintain, develop, market, or provide access to the Premises, including without limitation selling or developing all or portions of the Premises or to grant easements thereon, provided any such activity does not interfere with practices indicated in the Lease.

e. Relocate the Tenant into comparable space within the Marina at the EDA's sole option and expense. The EDA shall give the Tenant ninety (90) days notice prior to relocation and shall coordinate with the Tenant to avoid unreasonable disruption to the Brewery. The EDA shall not be liable for, and the Tenant expressly waives, any damages incidental to such relocation.

The EDA may exercise any or all of the foregoing rights hereby reserved by the EDA without being deemed guilty of an eviction or disturbance of the Tenant's use and possession and without being liable in any manner to the Tenant and without elimination or abatement of Rent, unless such interruption is prolonged and is a result of the EDA's negligence, or other compensation, and such acts shall have no effect upon this Lease.

## **21. MISCELLANEOUS**

a. The failure of the either party to enforce in any one or more instances any term, condition, rule, regulation or covenant as to which the other party shall be guilty of a breach or be in default, shall not be deemed to waive the right of the party to enforce the same or any subsequent breach or default notwithstanding that it had knowledge of such breach or default previously or at the time of the receipt of any rent or other sums by the EDA, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. The acceptance by the EDA of checks or cash from persons other than the Tenant shall in no event evidence consent of the EDA to any assignment or sub-lease by the Tenant. No waiver or modification of neither this Lease nor any release or surrender of the same shall be claimed by either party unless such waiver or modification or release or surrender be in writing and signed by the other party.

b. Each provision hereof shall bind and inure to the benefit of the EDA and the Tenant and as the case may be: if the Tenant is an individual, the Tenant's legatees, executors, and administrators; the EDA's successors and assigns; if the Tenant is a corporation, its successors;



and in the event that EDA consents to the assignments of this Lease notwithstanding the terms hereof, the Tenant's assigns.

c. The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form, and vice versa, and the plural is to be substituted for the singular number in any place herein in which the context shall require such substitution.

d. Paragraph headings for this Lease are used for convenience only, and are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provision to which they refer.

## **22. HOLDING OVER**

If the Tenant shall hold over after the Final Expiration Date or other termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over, the Tenant shall continue to be bound by all of the terms and conditions of this Lease, except that during such tenancy-at-sufferance, the Tenant shall pay to the EDA Rent at the rate equal to One Hundred Fifty Percent (150%) of that provided for in the foregoing Section 3. The increased Rent during such holding over is intended to compensate the EDA partially for losses, damages, and expenses, including frustrating and delaying the EDA's ability to secure a replacement tenant. If the EDA loses a prospective tenant or purchaser because the Tenant fails to vacate the Premises on the Expiration Date or any termination of the Lease after notice to do so, then the Tenant will be liable for such damages as the EDA can prove because of the Tenant's wrongful failure to vacate. The Tenant shall not be responsible for Holdover Rent if the Tenant renews this Lease.

## **23. SEVERABILITY**

The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way effect the validity of any other provision hereof.

## **24. JOINT VENTURE DISCLAIMER**

Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

## **25. SUCCESSORS AND ASSIGNS**

All parties hereto agree that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

## **26. APPLICABLE LAW, CONSTRUCTION, ATTORNEY'S FEES**

This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia. If the EDA and Tenant are involved in any litigation regarding the performance of their obligations under this Lease, then each party shall be responsible for its own legal fees and expenses incurred by such party in connection with such litigation.

## **27. NOTICES**

Wherever in this Lease it shall be required or permitted that permission, notice, or demand be given or served by either party to this Lease to or on the other, such notices or demands shall be deemed given or served whether actually received or not when deposited in the United States Postal Service, postage pre-paid, certified or registered mail, addressed to parties hereto at the respective addresses set forth below or any other address that may be specified by the Parties.

### **Legal Notice Address for EDA:**

James City County EDA  
Attn: Secretary  
P.O. Box 8784  
Williamsburg, VA 23187-8784  
yesjcc@jamescitycountyva.gov

### **With Copy to:**

County Attorney  
P.O. Box 8784  
Williamsburg, VA 23187-8784

### **Tenant:**

Billsburg Brewery, Inc.  
Attn: Dave Baum  
205 Kingswood Drive  
Williamsburg, VA 23185  
dbaum23188@gmail.com

In each case when this Lease calls for an approval by the EDA, unless otherwise specified herein, such approval may be granted by the Director of the EDA or his designee and shall not require action by the EDA.

## **28. AUTHORITY OF PARTIES**

If the Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the board of directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms.

## **29. PROPOSAL AND RFP; RELATIONSHIP TO LEASE AGREEMENT**

The Proposal and RFP shall be incorporated herein by reference. Any discrepancies between this Lease Agreement and the Proposal and RFP shall be resolved in favor of the Lease Agreement, the RFP and then the Proposal.

## **30. AMENDMENTS**

This Lease may be amended by signed, written agreement of the parties or their successors in interest.

## **31. FINAL UNDERSTANDING**

This Lease and all incorporated documents contains all agreements of the parties with respect to any matter mentioned herein.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES FOLLOW]**

ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY

By Robin D. Carson

Its: Vice Chairman

COMMONWEALTH OF VIRGINIA  
~~CITY~~/COUNTY OF JAMES CITY, to-wit:

The foregoing Lease Agreement was acknowledged before me this 9<sup>th</sup> day of  
DECEMBER, 2016, by ROBIN D. CARSON

R. Gustave  
NOTARY PUBLIC

My Commission expires: 10/31/2020  
Notary Registration No. 344854



APPROVED AS TO FORM:

M. H. H.  
EDA Attorney

**BILLSBURG BREWERY, INC.**

By *[Signature]*  
DAVID BAUM  
Its: PRESIDENT

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF JAMES CITY, to-wit:

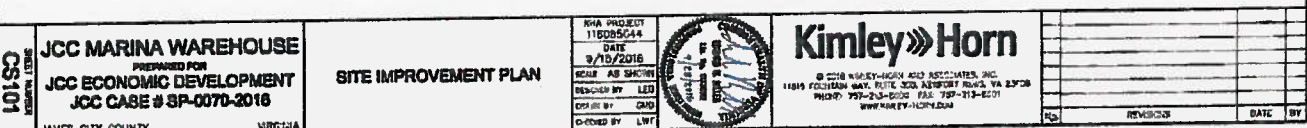
The foregoing Lease Agreement was acknowledged before me this 9<sup>th</sup> day of  
DECEMBER, 2016, by DAVID BAUM, as PRESIDENT of  
BILLSBURG BREWERY, INC.

*[Signature]*  
NOTARY PUBLIC

My Commission expires: 10/31/2020  
Notary Registration No. 344854



4





**Kimley » Horn**

**ITEM SUMMARY**

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Amy Jordan, Director, Economic Development & Maxwell Hlavin, EDA Legal Counsel

SUBJECT: Marina Maintenance

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In accordance with Section 10. (d) “Open Area” of the lease dated August 2, 2016, and executed between James City County and the EDA, the EDA, or its subtenant, is responsible for maintenance of the open areas as defined on the attached exhibit. Maxwell Hlavin will briefly review the maintenance agreement and answer any questions regarding obligations of responsibility to the open area. Staff recommends the EDA Real Estate Committee evaluate and discuss a maintenance plan in its next Real Estate Committee meeting to be considered as part of a budget recommendation.

**ATTACHMENTS:**

	Description	Type
☐	County_EDA Lease	Exhibit
☐	Exhibit Showing Relevant Areas at Marina	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/9/2018 - 10:58 AM



## DEED OF LEASE

This Deed of Lease (the "Lease") is dated the 2<sup>nd</sup> 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.

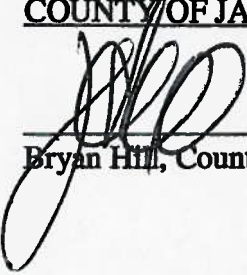
22. Final Understanding; Captions; Pronouns. This Lease represents the final understanding and complete agreement between the County and the EDA. This Lease cannot be modified except by a writing signed by the County and the EDA. The captions in this Lease are for purposes of reference only and shall 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



- Parcel Lines
- Building
- Open Area
- Shared Area
- Billsburg Maintenance Area



Aerial Photo 2015



1 inch = 100 feet  
0 50 100 Feet

# James City County EXHIBIT A



This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information and data obtained from various sources, and James City County is not responsible for its accuracy or how current it may be.

Copyright James City County GIS Office 12/22/2017  
M:\Departments\Parks\_and\_Rec\Jamestown Yacht Basin\JCC\_EDA\JCC\_EDA.mxd by KAH

**ITEM SUMMARY**

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Kate Sipes, Assistant Director, Economic Development

SUBJECT: EDA Parcel Maintenance

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The EDA property in the James River Commerce Center was timbered in 2012. About 2 years ago, the EDA contracted to have the larger debris removed from the property in an effort to move toward maintaining the appearance of the property with regular mowing. That effort resulted in an improved appearance, but the site is not yet in the condition to be mowed easily. Internal discussions resulted in the attached proposal from J.S.G. Corporation.

That proposal outlines costs for cleanup and mowing services, priced separately. Pricing includes options for about 7.5 acres (the area between Columbia Drive and the power line easement, most visible from Columbia Drive) or about 29 acres, which is most of the site. Mowing services are priced for a single occurrence or for three times per year, and prices are included for both the 7.5 acre area and the 29 acre area, as approximated.

The EDA could amend the budget to allocate funding for any part of this proposal. Staff notes the prices may not remain valid into the busy seasons of Spring or Summer, but revised quotes can be obtained. Staff also notes the most recent wetland delineation was completed for the virtual building site (north of Columbia Drive) only, and the state of the vegetation will affect the environmental regulations applicable to future development. Staff requests EDA guidance on the extent and priority desired for this property in the near term.

**ATTACHMENTS:**

	Description	Type
□	Proposal	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/9/2018 - 10:39 AM

# J.S.G. CORPORATION

*A Gary Massie Family Business*

## Proposal – REV. 1

Class A Contractor # 2705 137273A -- VDOT Prequalified - Vendor #J978  
VA DMBE SWaM (Small) Certification #694828 – VADMM ID. Number 0003927  
Mail & Physical Address: 5701 Centerville Road Williamsburg, Virginia 23188  
Phone: (757) 645-4870 Fax: (757) 645-4860 Web: [www.jsghcorp.com](http://www.jsghcorp.com)

ATTENTION Grace Boone	PHONE 757-259-4082	FAX	MOBILE
COMPANY James City County	DATE 11/08/2017	E-MAIL Grace.boone@jamescitycountyva.gov	
STREET 113 Tewning Road	PROJECT NAME EDA Site Clean Up		
CITY, STATE & ZIP CODE Williamsburg, VA 23188	PROJECT LOCATION 8925 Columbia Drive		
ARCHITECT/ENGINEER N/A	PROPOSAL NUMBER/DATE OF PLANS JSG #17-69 – REV. 1		

We Propose hereby to furnish material and labor-complete in accordance with specifications below, for the sum of:  
Dollars (\$ \_\_\_\_\_ See below \_\_\_\_\_)

Payment to be made as follows: Payment due 10 days following billing

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the Proposal. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

AUTHORIZED SIGNATURE *Caitlin Massie King* 757-645-4870 or [Caitlin.king@jsghcorp.com](mailto:Caitlin.king@jsghcorp.com)

NOTE: This proposal may be withdrawn by us if not accepted within 30 days.

### Description:

We are pleased to submit this proposal to perform the site cleaning work associated with the above referenced project. This proposal is based on aerial photos provided attached as Exhibit A. The scope of work will be limited as described below.

### Clarifications:

1. JSG will do its best to not disturb surface soil. All surface soil disturbance will be limited to only incidental ground disturbance associated with work, equipment, and methods needed to perform the clean-up activities listed below

### Site Clean-up Work Includes:

- 1) Mobilize equipment
- 2) Locate utilities, determine conflicts and document conflicts with JCC.
- 3) Locate and mark all fire hydrants and manholes.
- 4) Flag limits of grinding and cleaning areas per attached exhibit
- 5) Forestry mulching in order to have the area bush hog ready.

### Site Clean-up Work Excluded:

1. Temporary and permanent relocation of utilities required by the work.
2. Permits and Fees.
3. Seeding.



4. Establishing site.
5. Silt fence or other erosion and sedimentation measures.
6. Landscaping and nursery work.
7. Acquiring permission for Forestry Mulching or the crossing of existing easements or rights-of-way. We will notify all utilities through the Miss Utility system. If other permits or special conditions are required their cost or credit will be a Change Order.

**OPTION 1 Site Clean-up BASE BID – 7.5 Acres**

**\$12,906.00**

**OPTION 2 Site Clean-up BASE BID – 29 Acres**

**\$40,248.00**

**Maintenance Mowing Clarifications:**

- 1) Work includes mobilizing equipment, mowing and demobilizing equipment.
- 2) Assumes minimum 3x per year mowing.
- 3) Work excludes hand mowing around fire hydrants.

**OPTION 1 Maintenance Mowing – 7.5 Acres – PER MOW**

**\$1,959.00**

**OPTION 1 Maintenance Mowing – 7.5 Acres – YEARLY (3x)**

**\$5,877.00**

**OPTION 2 Maintenance Mowing – 29 Acres – PER MOW**

**\$2,843.00**

**OPTION 2 Maintenance Mowing – 29 Acres – YEARLY (3x)**

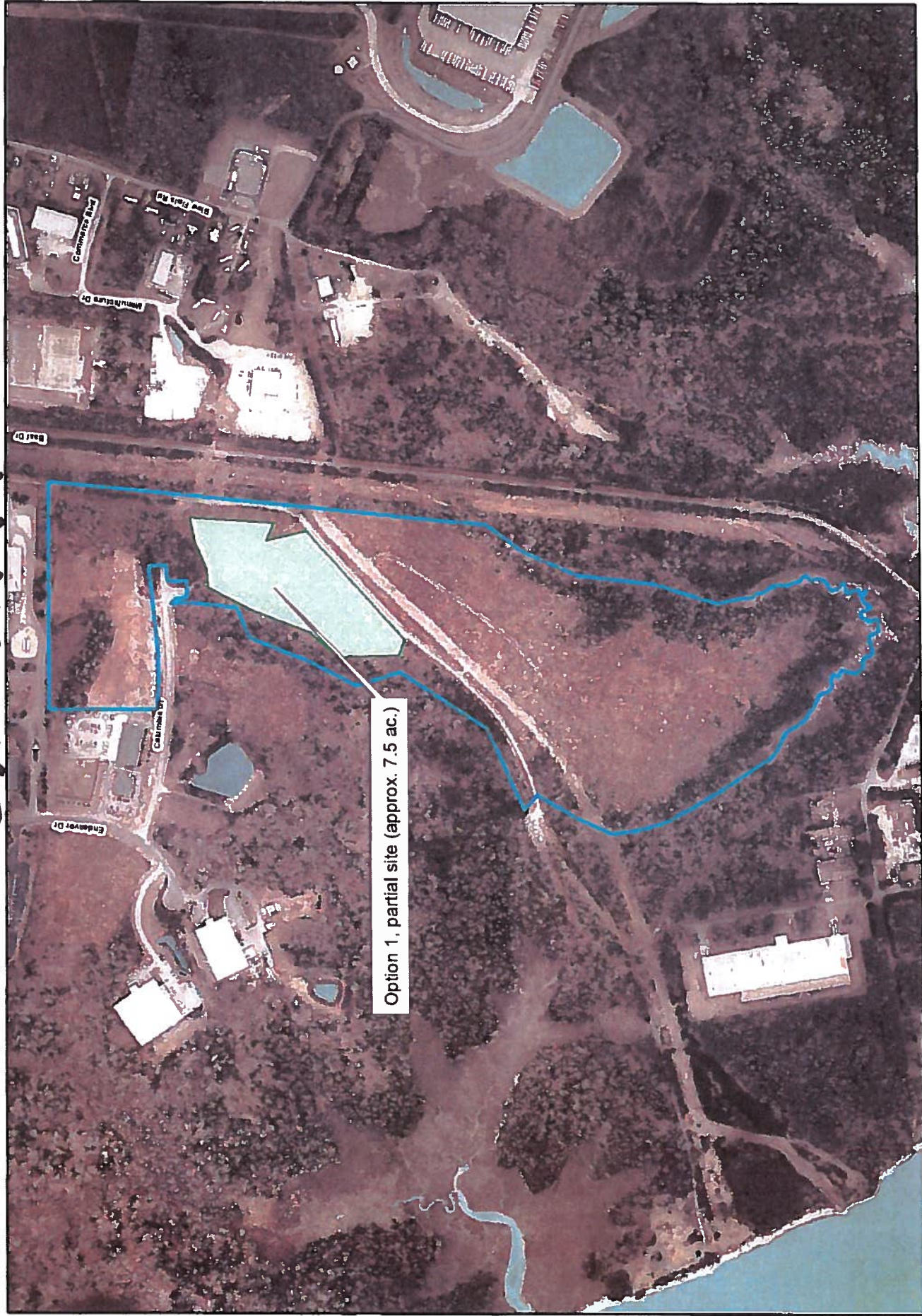
**\$8,529.00**

**Acceptance of Proposal** - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

**Signature** \_\_\_\_\_

**Date of Acceptance** \_\_\_\_\_

# Exhibit A



This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information and data obtained from various sources and James City County is not responsible for its accuracy or how current it may be.  
Copyright James City County GIS Office 10/4/2017  
M:\Departmental\GIS\unDev\_2016\DAEDA\_Site\_Clean\_Up.mxd



## James City County EDA Industrial Site, Option 1

1:7,163  
0 550 1,100 Feet





# Exhibit A



This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information and data obtained from various sources and James City County is not responsible for its accuracy or how current it may be.  
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M:\Departments\GIS\Dev\_2018\EDAEDA\_Site\_Clean\_Up.mxd



## James City County EDA Industrial Site, Option 2



**ITEM SUMMARY**

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Amy Jordan, Director, Economic Development

SUBJECT: Retreat Follow-up

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**ATTACHMENTS:**

	Description	Type
▣	Retreat Wrap-up	Cover Memo
▣	Regional Funding Overview	Exhibit
▣	Regional Funding Results	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/9/2018 - 1:46 PM

## **EDA DECEMBER 14 RETREAT RECAP**

### **Top Three Target Sectors:**

1. Advanced Materials and Components - received 8 votes
2. Professional and Technical Services - received 7 votes
3. Food and Beverage - received 5 votes

### **Outcomes from Breakout Groups:**

#### **Group 1**

1. Assessments/Studies for existing product (examples: JRCC sites, office market)
2. Seek assistance from a subject matter expert on advance materials
3. Develop areas for strategic investment and develop long-term vision

#### **Group 2**

1. Develop areas for strategic investment and long-term vision
2. Remove legislative barriers and streamline review processes
3. Build or improve infrastructure to support strategic development

### **Next Steps:**

1. OED staff will develop near and long-term strategy to target three sectors (ongoing)
2. Further Evaluate ROI on regional partnerships (information included)
3. Prioritize Think Tank (staff recommendations have been made)
4. Develop Budget request and evaluate future CIP request
5. Develop Incentives to support target sectors



## REGIONAL PARTNERSHIPS OVERVIEW

**GREEN - Those regional partnerships that are relevant and valuable to the mission of the JCC EDA and should be maintained at or near current funding level**

**GWP:** There is overwhelming support for a regional partnership with 8 green votes and no yellow or red votes. The cost of GWP is based on per capita and increases each year with the adjustment in Weldon Cooper's population estimates. Next year's anticipated cost will slightly increase with population estimates to approximately \$69,934. Since the adoption of the GWP, the EDA has absorbed this cost without reimbursement from the County. However, York and Williamsburg's EDA receive funding from the County to support this regional partnership.

**LPGA:** Although the cost is a significant contribution, staff and members of the EDA have expressed the value received is worth the investment as this is the County's most premier event and opportunity to showcase it at its best to both prospects and existing businesses. Staff is working to improve the experience and participation for the 2018 tournament and is also exploring Thursday becoming a GWP/VEDA partnership day which would differ some of the cost.

**Launchpad:** Although this is considered a "keep," the 4 to 4 split between green and yellow demonstrates that there is both great interest as well as great concern in the value of this organization based on the current level of contribution. The Executive Committee of Launchpad has been implementing many changes to improve Launchpad's experience and output and to stabilize funding. Currently, Launchpad is dependent on all three EDAs for support and if one member were to cease contribution, the organization would no longer have a dependable funding level to operate. All three EDAs would be responsible for tenant buildout and the lease. Staff recommends continuing participation for an additional year with quarterly updates provided by the Executive Director or a member of its executive committee.

**Peninsula Chamber of Commerce:** The cost of \$300 for membership is nominal and gives JCC EDA/OED a seat at the table with the other peninsula jurisdictions. The Peninsula Chamber has been instrumental in bringing together the six jurisdictions to collaborate on joint effort such as Go Virginia. OED can absorb this cost in the next budget cycle.

**Virginians for High Speed Rail:** Participation in this was green although it was the lowest level of support with 3 greens and 2 yellows. Staff recommends inviting the Executive Director of the organization to make a presentation to the EDA to learn of recent efforts and how its contribution continues to benefit this effort. The City of Williamsburg makes a contribution, but it is provided through the City's general budget and not the EDA. York County does not contribute to Virginians for High Speed Rail, nor does its EDA.

**YELLOW – Regional Partnerships where the relevance to the EDA and its mission might no longer be fully supported at current funding level**

**Arts Month/GWTCA -** The EDA has contributed to the salary of the Arts Month Coordinator for several years. This is the last year the EDA is obligated to fund the program under the most recent request from Terry Buntrock in 2015. Staff notified GWTCA in November that the request for additional funding for GWTCA arts related activities should be submitted to the County utilizing the same process as all other nonprofit funding request. It should be noted that with the exception of a few specialized events at Jamestown, almost all other arts month related events occur within the boundaries of Williamsburg or York. However, Jamestown already receives funding from James City County through its Tourism Fund to help with the cost of these special programs. Should the County decide to continue to fund the program, staff recommends the Tourism Fund or another funding source be considered for the request.

**Celebration of Business (COB)** - This event has been a consistent event of the EDA for 24 years. However, there has been expressed concern that the event is not as impactful and competes with similar events such as the Business Appreciation Event funded by the EDA. Staff recommends looking at combining events or making changes to improve the event.

**Business Appreciation Event (BAE)** - This event is jointly sponsored by all three EDAs and alternates host locality each year. Therefore, each EDA pays 1/3 of the catering cost for this event. Staff of ED departments typically cover any residual cost for printing and mailing invitations. Staff recommends this event should be the responsibility of the GWP moving forward.

**Start Peninsula** – A Memorandum of Understanding (MOU) began in 2017 for the next three years. The MOU outlines that each of the EDAs pay a portion of sponsorship in the amount of \$6,701. However, it has come to staff's attention the JCC EDA was budgeting additional sponsorship cost for Launchpad. Neither York County nor Williamsburg were budgeting the additional Launchpad sponsorship cost. Staff recommends the JCC EDA reduce its contribution to the amount stated in the MOU of \$6,701.

**RED – Regional Partnerships which are no longer relevant or add value to the EDA's current mission in light of limited resources**

**W&M Homecoming/Alumni Recruiting Event** - This event targets alumni in an effort to encourage them to bring their business back to Williamsburg. Previously JCC EDA had covered 1/3 of the expense for this event; however, OED has covered this expense in FY 17 and FY 18. The event does not include prospects and all participants are already familiar with W&M as an asset to the region as they are former alumni and at least half are still local in the community. Both the City and York EDAs cover this event and feel it is value added although few of its members attend the event. If this event continues as an alumni event, staff recommends it be taken under the marketing umbrella of GWP.

**SBDC** - SBDC no longer maintains an office in the Greater Williamsburg area. Due to the EDA's support and participation of other small business efforts such as Launchpad, it is recommended the contribution be eliminated as the level of service offers little value for the contribution with no performance agreement outlining any additional services rendered.

**RAISE** - Payments have been withheld while the airport goes through reorganization. There is no recommendation to continue with funding through the EDA at this time.

## REGIONAL PARTNERSHIPS

Keep = green Maybe = yellow No way = red

WHO/WHAT	FY18 budget	Total FY16-FY18	Green	Yellow	Red	Notes
<b>GWP/HREDA</b>	\$69,659	\$204,825	8	0	0	Based on per capita, which increased for FY18.
<b>LPGA</b>	\$36,000	\$108,848	6	0	0	Could share cost with GWP in FY18
<b>Peninsula Chamber of Commerce</b>	\$300	\$300	6	0	0	New expense in FY18
<b>Launchpad</b>	\$34,500	\$107,336	4	4	0	Additional \$3,836 paid FY17 for shortfall.
<b>Virginians for High Speed Rail Funding</b>	\$2,500	\$7,500	3	2	0	
<b>Arts Month/GWCTA</b>	\$15,000	\$45,000	0	5	0	\$12,000/yr prior to FY16
<b>COB</b>	\$3,000	\$9,000	0	5	0	Has remained at this level for several years.
<b>Business Appreciation Event (JCC, York, &amp; City EDAs)</b>	\$2,000	\$6,000	0	5	1	Has remained at this level since at least FY14. EDA pays 1/3 total cost.
<b>Start! Peninsula</b>	\$9,201	\$20,902	2	3	1	MOU began in FY17 at \$6,701 + sponsorships for EDA and/or Launchpad
<b>W&amp;M Homecoming/Alumni Recruiting event</b>	OED budget for FY17 & 18	\$2,196	0	2	4	Paid by EDA FY16 and prior.
<b>SBDC</b>	\$5,000	\$15,000	0	1	5	
<b>RAISE (airport marketing)</b>	\$26,804	\$33,505	0	2	6	Paid QTR1 in FY17; none to date FY18. Based on per capita.
<b>Total</b>	<b>\$203,964</b>	<b>\$560,412</b>				

**ITEM SUMMARY**

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Amy Jordan, Director, Economic Development

SUBJECT: January Report

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**ATTACHMENTS:**

	Description	Type
	January Report	Cover Memo

**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/9/2018 - 10:54 AM

## MEMORANDUM

DATE: January 11, 2018

TO: The Economic Development Authority

FROM: Amy Jordan, Director of Economic Development

SUBJECT: Director's Report, January 2018

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**Go Virginia** - The Go Virginia application for an Unmanned Systems Demonstration & Testing Facility proposed off Penniman Road in York County was recommended for approval for some funding at the regional level. However, in December it was not approved with the first round of request at the state review level. A list of questions for additional information was sent by the Go Virginia Board to Hampton Roads Planning District Commission (PDC). The six Economic Development Directors alongside the PDC are developing responses to the questions with the goal to resubmit the project in February.

**JRCC Sites** - The County has completed the acquisition of two properties previously owned by the Foundation in James River Commerce Center with the goal to transfer these properties to the Economic Development Authority at a future date. More information will be forthcoming.

**CIP Columbia Drive** - The Office of Economic Development (OED) staff submitted a Capital Improvements Program request in an amount not to exceed \$75,000 for completion of improvements along Columbia Drive in order to have it accepted into the Virginia Department of Transportation's maintenance program. It is anticipated the funding request will move forward to the Planning Commission. Once funding is in place and a contractor is selected, road improvements will take six to eight weeks to complete. General Services is assisting OED staff in this effort.

**Green Mount Industrial Park** - Staff is assessing infrastructure needed for Green Mount Industrial Park for a submittal in the Virginia Economic Development Partnership site readiness program. Staff will be meeting with Green Mount ownership in anticipation of submitting an application due in February. In order to qualify for the program, development sites must exceed 100 acres. More information on the process and submission will be forthcoming.

AJ/nb  
DirReport-011118-mem



**ITEM SUMMARY**

DATE: 1/11/2018

TO: The Economic Development Authority

FROM: Teresa Fellows, EDA Recording Secretary

SUBJECT: Adjourn until 8 a.m. on February 8, 2018 for the Regular Meeting

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**REVIEWERS:**

Department	Reviewer	Action	Date
Economic Development Authority	Fellows, Teresa	Approved	1/8/2018 - 3:07 PM