

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

**LEASE AGREEMENT  
HAMPTON PARK CAFÉ AND  
MULTI-USE COMMUNITY CENTER**

**THIS LEASE AGREEMENT** (the “Agreement”), is dated \_\_\_\_\_, 2015 (the “*Effective Date*” or “*Commencement Date*”), and is between **CITY OF CHARLESTON**, a South Carolina municipal corporation (the “*City*” or “*Landlord*”), and **CHARLESTON PARKS CONSERVANCY**, a South Carolina nonprofit corporation (the “*CPC*” or “*Tenant*”).

RECITALS

The City is committed to providing its citizens with meaningful recreational opportunities, both active and passive, and to that end, maintains and operates a city-wide system of parks and green spaces.

Hampton Park, the largest park on the peninsula, has been part of the City’s park system for over 110 years.

By its size, Hampton Park can accommodate a number of diverse uses and their respective clientele.

It is in the public interest for the use and enjoyment of Hampton Park to be enhanced and encouraged, in all of its varied aspects.

The mission of the Charleston Parks Conservancy is to increase the quality, awareness, appreciation and usage of Charleston’s parks and green spaces through enhancing existing public parks and green spaces, creating new green spaces and providing education and training in horticulture, ecology, and history to the public; and

Charleston Parks Conservancy has worked with the City Parks Department to develop various master plans for city green spaces and parks and, with an infusion of its own funds and its network of volunteers, has made improvements to City-owned parks including Simonton Park, Elliotborough Park, Cannon Square, Marion Square, Chapel Street Fountain Park, Brittlebank Park, Hazel Parker Playground, Riverland Terrace Greenspace, Allan Park, Colonial Lake, Corrine Jones Playground, Etiwan Park, Logan Park, Magnolia Park and Community Gardens, Maybank Tennis Center, Shaw Community Center, Theodora Park, Tiedemann Park and Nature Center, Windemere Community Garden and Wragg Square.

Charleston Parks Conservancy seeks to further its mission by seeking out opportunities to collaborate with the City and other individuals and organizations to provide additional amenities and programs within city parks and open spaces to encourage increased use of such parks and spaces.

Certain facilities in Hampton Park, namely, the Horse Barn, Paddock, Gazebo/ Snack Bar, Parking Area and Superintendent’s House (the “Premises”), are underutilized, if utilized at all, in

that the Snack Bar has been closed for decades, the program for the Horse Barn and Paddock has become obsolete in that the City no longer has a police horse patrol unit, and the Superintendent's House, once the offices of the Departments of Parks and Recreation, is now vacant and in need of repair.

Charleston Parks Conservancy has commissioned a study of these Premises at Hampton Park for the purpose of devising a program that will improve their utilization and accommodate a different and more relevant recreational experience of the Park, in addition to existing recreational uses, by providing venues for refreshments, dining, meetings, community events and other amenities.

The City finds these Premises in the Park are now underutilized and their refurbishment and use as venues for refreshments, dining, meetings and community events are necessary for the full use and enjoyment of the Park by the public.

The City finds it to be in the public interest that the recommendations of the study commission by the Charleston Parks Conservancy be implemented.

The City and the Charleston Parks Conservancy have come to an agreement as to how to best implement the recommendations of the study.

***NOW, THEREFORE***, for and in consideration the Recitals, of the covenants and agreement of the respective parties herein contained, the parties hereto, for themselves, their successors, legal representatives and permitted assigns, do hereby agree as follows:

1. Premises:

(a) The property subject to this Agreement is a portion of Hampton Park as shown on Exhibit A, attached hereto and made a part hereof, to include the improvements, and shown on Exhibit A as the Café Premises and the Multi-Use Community Center Premises, collectively, the Premises. Landlord hereby leases to the Tenant and Tenant does hereby lease from the Landlord, the Premises, on all the terms and conditions as hereinafter set forth.

(b) Upon acceptance of the Premises from the City, Tenant shall be deemed to have accepted the Premises in its then "AS-IS" condition. Except as expressly set forth herein, City has made no guaranties or representations with respect to the Premises. Upon Tenant's execution of this Agreement, Tenant shall be deemed to have (a) accepted the Premises; (b) acknowledged that the same are in the condition acceptable to Tenant, and (c) agreed that the obligations of City imposed hereunder have been fully performed. City shall not be liable for, and Tenant agrees to indemnify and hold City harmless from, any damage suffered by Tenant, Tenant's property, or third parties as a result of the condition of the Premises.

2. Term of Agreement and Extension. The initial term of the Agreement shall begin on the Commencement Date and shall continue until the date that is twenty-five (25) years after the issuance of the first Certificate of Occupancy for any structure on the Premises contemplated to be renovated by the Master Plan, as hereafter defined (the "Term"). The Term of this Agreement

shall be extended for an additional ten (10) year term, provided: (a) the Tenant is not in default and desires to extend the Term; and (b) at least six (6) months prior to the expiration of the Term the Tenant, in conjunction with the City's Department of Parks (or successor Department), has prepared and presented for approval by the City, which approval shall not be unreasonably withheld or delayed, a master plan for park improvements to be implemented by Tenant during the additional term. The Term of this Agreement shall be extended for a second additional ten (10) year term, provided: (a) Tenant is not in default and desires to extend the Term; and (b) Tenant has substantially implemented the park improvements of the master plan for the first additional ten year term or demonstrates cause for not having done so; and (c) at least six months prior to the expiration of the first additional ten year term, the Tenant, in conjunction with the City's Department of Parks (or successor Department) has prepared and presented for approval by the City, which approval shall not be unreasonably withheld or delayed, a master plan for park improvements to be implemented by Tenant during the second additional term. Nothing herein shall prevent the modification of the master plans for the additional ten year terms, as mutually agreed to by the City and Tenant.

3. Rent: Tenant shall pay to the Landlord, as rent throughout the Term, beginning on the Commencement Date of this Lease, the following rent (together with all other sums due and owing under this Lease, "**Rent**"), without deduction, set off, prior notice or demand:

(a) Base Rent. Base Rent in the amount of one (\$1.00) dollar a year.

(b) Additional Base Rent. Tenant shall pay Additional Rent, as set out hereafter, upon the occurrence of an event or events, as hereafter set out, that trigger the payment of Additional Rent (herein "Triggering Event"). Additional Rent shall be paid no later than ten days after a Triggering Event. Landlord shall have the right, but not the obligation, to pay Additional Rent resulting from a Triggering Event if it deems it in its interest to do so, without waiver or impairment of its rights to demand reimbursement from the Tenant.

4. Commencement Date. This Agreement shall commence at 12:01 a.m. on the Commencement Date, and Tenant shall commence management of the Premises at that time.

5. Master Plan and Permitted Uses.

a. The Premises may be put to the uses set out and described in the Master Plan, as hereafter described (herein "Permitted Uses"), and no other.

b. The study entitled "Washington Hall Multi-Use Community Center & Café at Hampton Park Revitalization Plan" by Turnberry Consulting, dated June 25, 2014, and attached to this Agreement as Exhibit B constitutes the Master Plan and, subject to the conditions below, the permitted uses for the Premises.

The Café Premises:

i. Hours of Operation: The Café may be open during the hours of the day that Hampton Park is open to the general public. [Notwithstanding the foregoing,](#)

- the Café shall not operate after 9:00 p.m., unless such operation is authorized by the City through the Special Events process.
- ii. Alcoholic Beverages: Beer and wine may be sold from the Cafe for on-premises consumption only, and only between the hours of noon and the authorized time for closing. The annual gross proceeds of sales from beer and/or wine shall not equal or exceed thirty-five (35%) per cent of the total annual gross proceeds of sales of the Café. Other alcoholic beverages may be permitted as the City permits and state law allows. Tenant shall clearly demarcate the portion of the Café Premises where on- premise consumption of beer or wine may take place by secure all or some of the Café grounds by means means of a fence or other approved barrier and signage. Tenant and shall be responsible for monitoring patrons to assure that all consumption of alcoholic beverages remains within the fenced area, and shall maintain a security officer at the Café Premises at all times during which beer or wine are sold. Tenant shall be solely responsible for securing the necessary permits to sell beer and wine as set forth herein and shall operate the Cafe in accordance with all applicable laws.
  - iii. Music: Non-amplified Mmusical entertainment is permitted at the Cafe, provided such entertainment does not exceed sixty-five (65) decibels, measured from the intersection of Tenth Avenue and Mary Murray Boulevard.
  - iv. Tenant shall partner with the City’s Office of Cultural Affairs (or a successor office) in programming public art displays at the Café.
  - ~~iv.v.~~ Notwithstanding the foregoing, nothing herein shall be construed to exempt the Café Premises from being operated, at all times, in accordance with all City ordinances.

The Multi-Use Community Center Premises (Superintendent’s House, Horse Barn and Paddock and Parking):

- i. Hours of Operation: The Multi-use Community Center may be used on a daily basis from 6:00 a.m. until ~~140:030~~ 10:30 p.m.
- ii. Alcoholic Beverages: The on-premise consumption of beer, wine and other alcoholic beverages is permitted at the Multi-Use Community Center in conjunction with a scheduled event or program. Tenant shall be solely responsible for securing the necessary permits for the on-premise consumption of beer, wine or other alcoholic beverages and shall operate the Multi-Use Community Center in accordance with all applicable laws. Tenant shall be responsible for monitoring patrons to assure that all consumption of alcohol remains within the Multi-Use Community Center grounds, and Tenant shall maintain a security officer at the Multi-Use Community Center during all times when beer, wine or alcoholic beverages are served.
- iii. Music: No music or other form of entertainment shall exceed sixty-five (65) decibels from any portion of the Multi-Use Community Center, as measured from the center of the intersection of Twelfth Street and Dunneman Street

and from the Gazebo in the Park. All amplified music must be indoors. No music is permitted after 10:00 p.m.

- iv. Tiered Rentals: In acknowledgement of the Multi-Use Community Center being publicly owned and intended for public use, Tenant agrees to establish and implement throughout the Term tiered rentals, one applicable to City residents and one applicable to non-City residents. The City resident rate shall be discounted at least 33.33% from the nonresident rate. Rental of the Multi-Use Community Buildings by City residents shall not be unreasonably withheld, and to this end, the City shall have the right to review and audit Tenant's reservation books.
- v. Parking: When not needed for an event at the Multi-Use Community Center, the parking lot of the Center shall be available for use by the City, at no charge to the City.
- vi. Special Event: Any use of the Multi-Use Community Center by a group in excess of 3250 people, including staff, shall require a permit from the City Special Events Committee. Any use of any portion of the Park outside the Premises shall require a permit from the City Special Events Committee.
- vii. City Use: Subject to availability and coordination with Tenant, the City may, for no rental fee, use the Multi-Use Community Center for its own purposes ~~twice~~ every quarter. The City may use the Center more frequently, for no rental fee, if the Center is otherwise available and provided the City pays for any expenses related to that use. In addition, the City's Recreation ~~Department~~ Department and Office of Neighborhood Services may schedule activities at the Center, subject to availability and coordination with the Tenant and for no rental fee, provided it assumes all responsibility for any expenses related to the activity.
- viii. Public Accessibility: The restrooms, interpretive center (as hereafter defined) and plaza area of the Horse Barn component of the Multi-Use Community Center shall be open to the public on a daily basis from 9 am to 5 pm, except when restricted access is required by the Tenant to prepare for and stage scheduled events.
- ix. Community/Demonstration Garden: A community or demonstration garden will be installed in the Paddock component of the Multi-Use Community Center and made available to the general public, subject to reasonable rules and regulations imposed by the Tenant.
- x. Interpretative Center: The Tenant shall incorporate into the Horse Barn or Superintendent's House an interpretive center that documents the history of Hampton Park.
- ~~x.~~xi. Notwithstanding the foregoing, nothing herein shall be construed to exempt the Multi-Use Community Center from being operated, at all times, in accordance with all City ordinances.

6. Revenues: An inducement for the City entering this Agreement is to encourage and support the Tenant's mission to increase the quality, awareness, appreciation and usage of parks in the City of Charleston. An inducement for the City entering this Agreement is to assist Tenant

in fulfilling its mission by providing a means of generating revenues that will allow Tenant to continue and grow its volunteer recruiting efforts, programing, training, park renovation and maintenance activities in City of Charleston parks. Tenant acknowledges these interests of the City and commits that the net revenues generated by this Agreement shall be solely dedicated to benefitting parks, recreational experiences and Tenant's operations in the City's parks. Tenant shall provide its Form 990 (or a successor equivalent form), together with an attached annual audited financial report to the City, setting forth the gross revenues generated by the Premises, the expenses of operation, resulting annual net revenues and the amount expended or earmarked for City park and green space improvements and Tenant operations. The Tenant shall also provide an additional report that includes the current event fee schedule, a summary of contracted events and the percentage of events per year booked by Charleston residents.

7. Tenant's Renovations. The Tenant may make certain renovations, as set forth herein, to the Premises in order to bring the same into the condition necessary to implement the Master Plan (the "**Tenant's Renovations**"). The Tenant's Renovations shall be performed subject to the following terms and conditions:

(a) The Tenant's Renovations shall be performed in strict compliance with plans approved by the Mayor or his designee ("**Upfit Plans**"), and once the Upfit Plans have been approved by the Mayor or his designee, no changes shall be made thereto without the written consent of the Mayor or his designee. Approval of Upfit Plans includes both interior and exterior renovations.

(b) The Upfit Plans for the Tenant's Renovations shall be submitted to the City on or before forty-five (45) days prior to commencement of work. The Mayor or his designee shall have thirty (30) days to inspect the Upfit Plans and to (i) provide the Tenant with written approval thereof, or (ii) inform Tenant in writing of any necessary changes thereto, which the City may require in its sole discretion. After making any changes to the Upfit Plans required by the City and receiving the City's written approval thereof, the Tenant shall submit the Upfit Plans and other necessary documentation to any applicable regulatory body for approval (all such regulatory approval, as is applicable, is referred to herein as "**Regulatory Approval**").

(c) In the event the Tenant receives Regulatory Approval for the Upfit Plans and notifies the City that it wishes to proceed with the Tenant's Renovations, the Tenant shall be entitled to begin pursuing construction of the Tenant's Renovations in accordance with the terms and conditions hereof. The Tenant's Renovations shall be performed in strict conformity with the Upfit Plans, and no deviation therefrom shall be permitted without the written consent of the City. The contract for the Tenant Renovations ("**Upfit Contract**") shall be entered into with a fully licensed, bonded and insured general contractor ("**Upfit Contractor**") for the completion of the Tenant's Renovations, all on terms and conditions approved, in writing, by the City prior to the execution thereof.

(d) During construction of the Tenant's Renovations, City may assign, at its own cost, a project manager to oversee construction to monitor and assure compliance with the Upfit Plans. In any and all events, Tenant shall report bi-weekly to City, through its Department of Parks, on the construction progress.

(e) All buildings and other improvements constructed on the Premises, including the Tenant's Renovations, shall remain upon the Premises at the termination of this Agreement and shall, without compensation to Tenant, become the property of the City at the termination of this Agreement. Nothing herein shall be construed so as to subject the Premises, or permit the Premises to be subjected to liens of any laborer, contractor, mechanic or materialman or to any other liens arising out of or connected with the development, construction or maintenance of any improvements, alterations or additions to existing improvements (except for statutory liens arising in the ordinary course which are promptly discharged), unless City expressly consents to such liens in writing. Tenant shall indemnify and hold harmless City from and against any mechanic's lien or other liens and any and all costs associated therewith, including reasonable attorney's fees and costs. If requested by City, Tenant shall be required to "bond off", within fifteen (15) business days, any filed mechanic's liens in accordance with SC Code section 29-5-110, as amended.

(f) If a Certificate of Occupancy has not been issued for a structure contemplated to be renovated by the Master Plan within three (3) years of the Commencement Date of this Agreement, the City shall have the right to terminate this Agreement. In the event that significant progress has been made toward acquiring a Certificate of Occupancy such that the Mayor or his designee is satisfied that a Certificate of Occupancy is likely to be issued within a reasonable period of time after the third year from the Commencement Date, the Mayor may extend the time for securing the first Certificate of Occupancy for such period of time as (s)he deems reasonable.

If Certificates of Occupancy have not been issued for all the structures contemplated to be renovated by the Master Plan by the end of the seventh year after the Commencement Date, the City shall have the right to terminate this Agreement; provided such termination shall apply only to those portions of the Premises (the Café Premises or Multi-Use Community Center Premises) that have not been fully renovated as contemplated by the Master Plan. In the event that significant progress has been made toward acquiring all Certificates of Occupancy such that the Mayor or his designee is satisfied that all Certificates of Occupancy are likely to be issued within a reasonable period of time after the seventh year from the Commencement Date, the Mayor may extend the time for securing the all Certificates of Occupancy for such period of time as (s)he deems reasonable.

(g) Should the Landlord make a financial contribution to the Tenant's renovations of the Café Premises or the Multi-Use Community Center Premises, the City shall be entitled to share in the revenue generated by the applicable Premises in accordance with a formula upon which the parties will agree at the time of the contribution.

8. Assignment and Subletting: Tenant may not assign this Lease. Tenant may sublet the some or all of the Premises with the approval by the Mayor or his designee of the subtenant and the terms of the sublease. Consent to one sublease shall not constitute a waiver of this provision with respect to subsequent subleases.

9. Security Interest: The Tenant may and is expected to mortgage, pledge, or grant for security or otherwise encumber this Agreement. Under no circumstances shall the City subordinate its

interest in the fee to the Premises to any mortgagee, creditor, holder of a security interest or otherwise.

10. City's Property. All improvements and additions attached to the Premises at any time during the Term, including without limitation, all partitions, carpets, light fixtures, doors, hardware, shelves, cabinets and ceilings shall remain in the Premises and shall revert to the City upon the expiration or earlier termination of this Agreement.

11. Utilities and Services: City shall pay the cost of all electrical, sewer and water service owing with respect to the Premises or part thereof until such time as Tenant commences construction or renovation. Upon the commencement of construction or renovation of any component of the Premises (the Cafe; the Horse Barn; the Paddock; the Superintendent's House; the Parking area), Tenant shall be responsible for and pay and carry in its name the electrical, sewer and water service owing with respect to such component. Tenant shall be solely responsible for all costs associated with transferring utilities to its name, including if necessary, costs of separately metering the Premises. Tenant shall provide its own janitorial and garbage and trash collection services to the Premises. Tenant shall furnish, at its own expense, any other utilities or services required for its use of the Premises.

12. Maintenance/Capital Improvements: The City shall maintain the Premises, to include the maintenance and replacement of capital improvements in such manner and on such terms as it, in its sole discretion, deems advisable until Tenant commences construction or renovation of the Premises or any component of it (the Cafe; the Horse Barn; the Paddock; the Superintendent's House; the Parking area). Upon commencement of construction or renovation of any component of the Premises, the costs of maintenance and capital improvements, or replacements thereof, of such component shall become the responsibility of the Tenant. Upon Tenant becoming responsible for maintenance and capital improvements to the Premises or any component thereof, Tenant shall take good care thereof, both inside and outside and keep the same and all parts thereof, including without limiting the generality thereof, the roof, foundations and appurtenances thereto, HVAC systems, together with any and all alterations, additions and improvements therein or thereto, in good order and condition, suffering no waste or injury, and shall, at the Tenant's expense, promptly make all needed repairs and replacements, structural or otherwise, in and to the Premises or applicable component thereof (and improvements made or to be made thereto) which is a part of the Premises, including vaults, sidewalks, water, sewer and gas connections, HVAC equipment, pipes and mains, and all other fixtures, machinery and equipment now or hereafter belonging to or connected with said Premises or applicable component thereof (and improvements made or to be made thereto). All such repairs and replacements shall be of first class quality sufficient for the proper maintenance and operation of the Premises or applicable component in accordance with the Master Plan. The Tenant shall not permit the accumulation of waste or refuse matter, nor permit anything to be done upon the Premises which would invalidate or prevent the procurement of any insurance policies which may at any time be required pursuant to the provisions of the terms hereof. Tenant shall surrender the Premises to City at the expiration or earlier termination of this Agreement in as good condition as they were when received (or as subsequently improved or altered by Tenant's Agreement Renovations), normal wear and tear excepted.

13. Operation by Tenant: Tenant shall: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean; (b) maintain the Premises at its expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; (c) retain a dumpster service for the use and operation of the Premises only and keep any garbage, trash, rubbish or refuse in containers within the interior of the Premises until removed by said service; (d) comply with all laws, ordinances, rules and regulations of governmental authorities and all recommendations of the Fire Underwriters Rating Bureau now or hereafter in effect; and Tenant shall not (e) place or maintain any boxes, equipment or other articles in any entry of the Premises, on the foot walks adjacent thereto or elsewhere on the exterior of the Premises; (f) permit undue accumulation of garbage, trash, rubbish or other refuse within or without the Premises; (g) cause or permit objectionable odors to emanate or be dispelled from the Premises; and (h) Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene the City's policies insuring against loss or damage by fire or other hazards (including, without limitation, public liability) or which will prevent the City from procuring such policies from companies acceptable to the City or, at the City's election, the South Carolina Insurance Reserve Fund. Tenant shall at all times operate and maintain the Premises in accordance with all applicable federal, state and local laws and ordinances.

14. Property of Tenant: Tenant may, and at the expiration or earlier termination hereof shall, remove all furniture, equipment, and other personal property which Tenant shall have placed in the Premises, other than personal property or fixtures which revert to the City as set forth in this Agreement. All such property, owned by Tenant or any approved sub-Tenant, shall, during the term thereof, be at the risk of Tenant and not the City, and Tenant shall be liable for any loss thereof or damage thereto resulting from any cause whatsoever; and each policy of insurance covering such property shall contain a standard waiver of subrogation endorsement. Any such property not removed at the expiration or earlier termination of this Agreement, or which cannot be removed without permanent or substantial damage to the Premises, shall be deemed abandoned and may be disposed of by the City in any manner whatsoever.

15. Additional Charges: The following charges payable by Tenant shall be considered Additional Base Rent under this Lease:

(a) Real Estate Taxes: Following the Commencement Date, the Tenant shall be responsible for the payment of all real estate taxes, if any, assessed against the Premises or any part thereof\* throughout the Term. The term "real estate taxes" shall include real and personal property taxes, the Charleston County Solid Waste fee, and any taxes, assessments, levies, fees or charges assessed or imposed on the Premises or its contents. Tenant shall pay prior to delinquency, all taxes, fees and assessments of every kind or nature imposed or assessed upon or with respect to furnishings, fixtures, equipment, and other property of Tenant or City at the Premises.

(b) Property Insurance. The City shall insure the Premises against casualty and fire and flood in amounts reasonably determined to be appropriate by the City; provided however, upon the commencement of construction or renovation of the Premises or any component thereof (the Cafe; the Horse Barn; the Paddock; the Superintendent's House; the Parking area) Tenant shall

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\* At the time of the execution of this agreement the Premises is not subject to property tax.

reimburse the City its costs in insuring the Premises or any applicable component thereof within 30 days of receipt of an invoice therefore; provided however, City reserves the right to require Tenant to secure insurance against casualty, fire and flood in an amount of the full replacement cost of the applicable structure, in which event Tenant shall secure said insurance and provide City with proof thereof. If the City should require Tenant to secure casualty, fire and flood insurance, City shall be named as an additional insured on such policies and such policies shall provide for 30 days written notice to City of any expiration, amendment, cancellation or alteration of such policies. Tenant shall be responsible, at its election, for insuring any other improvements on the Premise and any of its contents or other personal property.

16. Insurance Required: Tenant shall provide, at Tenant's sole expense the following insurance coverage which shall be deemed as Additional Base Rent under this Lease:

(a) Liability. A general liability Policy with limits of \$1,000,000 per person/occurrence for bodily injury for injury or death of any one person, \$100,000 for property damage to or loss of property of others, subject to an aggregate limit of \$3,000,000 for all bodily injury and property damage or loss due to an insured risk (or such greater limits as may be necessary to meet the threshold of coverage under the umbrella Policy), and an umbrella limited Policy with a limit per person/occurrence and aggregate combined single limit for all liability of \$10,000,000 with the City as additional named insured, and which provide for thirty (30) days, prior written notice to City of any expiration, amendment, cancellation or alteration of such Policy. After the fifth (5th) Agreement Year and at the end of each fifth Agreement Year thereafter, City and Tenant shall negotiate in good faith adjustments to the liability coverage to be provided pursuant to this paragraph to adjust such coverage to a level comparable to that provided by the stated amounts as of the date hereof.

(b) Builder's Risk. During the period of any construction activity (including, but not limited to the Tenant's Renovations) on or in the Premises, an "all risk" Policy in an amount equal to one hundred percent (100%) of completed value, non-reporting form insuring City and Tenant for builder's risk in an amount satisfactory to City.

(d) Worker's Compensation. Worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of South Carolina, including employer's liability insurance in the limits required by South Carolina.

(e) Policy Documents. Tenant shall deliver to City receipts evidencing payment of the Policies' premiums and certificates of insurance evidencing that the terms of this Article 16 have been met prior to the date on which such coverage is needed and thereafter Tenant shall deliver replacement certificates of insurance not less than fifteen (15) days prior to the expiration of any Policy.

(f) Proceeds Collection. When City is authorized hereby to collect any proceeds due under any Policy, City shall not be liable to Tenant or any other entity or person due to City's failure to collect any such proceeds.

17. Signs and Advertising: Any signage erected at or on the Premises shall be subject to the approval of the Mayor or his designee and comply with applicable zoning regulations.

18. Damage or Destruction Casualty: If any of the structures on the Premises is damaged or destroyed by fire or other casualty in an amount that is less than 50% less of its fair market value, the City, or at the City's election the Tenant, shall commence restoration of the affected structures within one hundred eighty (180) days of the date of such damage or destruction and shall diligently pursue such restoration to completion and to a condition reasonably equivalent in design, quality, size and utility to the structure as it existed immediately prior to the damage or destruction. Insurance proceeds of any applicable party shall be made available to the party restoring the Premises. If any structure on the Premises is damaged or destroyed by fire or other casualty in an amount of 50% or more of its fair market value, City shall have the option of (1) terminating this Agreement by giving written notice to Tenant, in which event the Term of this Agreement shall expire and Tenant shall immediately vacate the Premises; or (2) repairing, restoring, rebuilding, reconstructing or replacing the structure, or at its election having Tenant do so, such work to commence within one hundred eighty (180) days of the date of such damage or destruction and to continue until completion and to a condition reasonably equivalent in design, quality, size and utility to the structure as it existed immediately prior to the damage or destruction; provided however, City will repair and restore the affected structure if Tenant agrees to pay any costs of repair and restoration that exceed the amount of insurance proceeds available to the City or Tenant as a result of the damage, and provided further that Tenant provide City documentation of its ability to meet the financial obligations required to complete the repair and restoration.

19. Eminent Domain:

(a) For the purposes of this Agreement (i) "**Taking**" shall mean any condemnation or exercise of the power of eminent domain by a public authority vested with such power, or any taking in any other manner for public use, including a private purchase, in lieu of condemnation, by a public authority vested with the power of eminent domain; (ii) the "date" of any taking shall mean the earlier of the date upon which title to the Premises or portion thereof taken is vested in the condemning authority, or the date upon which possession of the Premises or portion thereof is taken by the condemning authority; and (iii) "substantially all" of the Premises shall mean so much of the Premises as, when taken, leaves the untaken portion unsuitable for the continued feasible and economic operation of the Premises by Tenant for the same purposes as immediately prior to such taking.

(b) In the event of a taking of all or substantially all of the Premises, then the Term of this Agreement shall automatically cease and terminate on the date of such taking. Such termination, however, shall be without prejudice to the rights of either City or Tenant to recover compensation and damages from the condemning authority in connection with such taking, and neither City nor Tenant shall have any rights in any compensation or damages payable to the other. The entire compensation award for the Premises (as contrasted with the Agreement), including but not limited to all damages as compensation for diminution in value of the Agreement, reversion, and fee, shall belong to City.

(c) In the event of a taking of a portion of the Premises less than all or substantially all of the Premises, then this Agreement and all the duties and obligations of Tenant under this Agreement shall remain unmodified, unaffected and in full force and effect.

(d) In the event of a taking, Tenant shall make no claim to the award to the City nor City to the award to the Tenant, each having its own separate action.

20. Indemnity: Commencing on the Commencement Date, Tenant will indemnify and defend City and hold City harmless from and against all claims, actions, liens, demands, expenses and judgments for loss, damage, or injury to property or person occurring on or about the Premises or in any way related to the use or occupancy of the Premises by Tenant. If City, without fault on its part, is made a party to any litigation commenced by or against Tenant, Tenant agrees to protect and hold City harmless therefrom and to pay all costs, expenses and reasonable attorney fees incurred or paid by City in connection with such litigation.

21. City's Inspections: City, through its officers, employees, consultants and other authorized representatives, shall have free and unobstructed access to the Premises or any portion thereof at reasonable times and at reasonable intervals for purposes of reasonable inspections.

22. Events of Default by Tenant: Any one or more of the following events shall amount to an Event of Default or Default by Tenant under this Agreement:

(a) Failure by the Tenant to pay any item agreed to be paid at the time specified herein and continuing for a period of twenty (20) or more days therefrom.

(b) Failure of Tenant to provide any certificate required hereunder within the time therein specified.

(c) Failure of the Tenant to observe and perform any covenant, condition or agreement in this Agreement on the part of the Tenant to be observed or performed within thirty (30) days after written notice specifying such failure and requesting that it be cured given to the Tenant by the City, unless the City shall agree in writing to an extension of such time prior to its expiration, provided, however, if the failure is such that cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by Tenant within the applicable period and diligently pursued until the problem is corrected.

(d) The dissolution or liquidation of the Tenant or the filing by the Tenant of a voluntary petition in bankruptcy or failure by the Tenant promptly to lift any execution, garnishment or attachment of such consequence as will impair the ability of the Tenant to carry on its operations at the Premises, or the commission by the Tenant of any act of bankruptcy, or adjudication of the Tenant as a bankrupt, or assignment by the Tenant for the benefit of its creditors, or the entry by the Tenant into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Tenant in any proceeding for its reorganization instituted under the provision of the general Bankruptcy Act, as amended, or under any similar act in any domestic or foreign jurisdiction which may now be in effect or hereafter enacted.

(e) The occupancy of any portion of the Premises by an assignee, licensee, sublessee or other third party who is not approved by the Mayor or his designee.

(f) A forfeiture of Tenant's charter.

(g) Any change to the corporate status of the Tenant that alters the mission of Tenant to increase the quality, awareness, appreciation and usage of the City's parks and green spaces that is not approved by the City.

(h) Failure of the Tenant to actively pursue and maintain the mission of preserving, creating and improving parks and green spaces in the City of Charleston.

(i) Failure of the Tenant to maintain in good standing its corporate status as a nonprofit corporation under state and federal law.

(j) Failure of the Tenant to operate any part of the Premises in accordance with the Master Plan for a period of ninety (90) consecutive days.

23. City's Remedies on Default: Whenever any Event of Default shall have happened and be subsisting, the City may at its option take any one or all of the following remedial steps:

(a) The City, without terminating this Agreement, may (i) exclude and remove the Tenant and all persons and contents from the Premises by force, summary proceedings, or otherwise, without being liable to Tenant therefor, and Tenant hereby expressly waives the service of any notice in writing of intention of City to reenter or to institute legal proceedings to that end; (ii) reenter and take possession of the Premises.

(b) The City may take whatever action at law or in equity may appear necessary or desirable to collect any amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Tenant under this Agreement.

(c) Terminate this Agreement.

No action taken pursuant to this Paragraph shall require the City to return all or any portion of monies paid hereunder, all of which shall survive any such action, and the City may take whatever action at law or in equity as may appear necessary and desirable to collect any other amounts then due and thereafter to become due and/or to enforce the performance and observance of any obligation, agreement or covenant of the Tenant hereunder.

24. Tenant's Remedies on Default: Whenever any Event of Default shall have happened and be subsisting, the Tenant may at its option take any one or all of the following remedial steps:

(a) The Tenant, without terminating this Agreement, may continue to possess and operate the Premises and enforce, by law, equity or other legal means its rights under this Agreement in the courts of the State of South Carolina.

(b) The Tenant may take whatever action at law or in equity may appear necessary or desirable to collect any amounts then due and thereafter to become due or otherwise to enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

(c) The Tenant may terminate this Agreement.

25. Remedies Cumulative; Non-Waiver: No remedy herein or otherwise conferred upon or reserved to City or Tenant shall be considered exclusive of any other remedy, but the same shall be distinct, separate and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity; and every power and remedy given by this Agreement may be exercised from time to time as often as occasion may arise or as may be deemed expedient. No delay or omission of City to exercise any right or power arising from any default on the part of Tenant shall impair any such right or power, or shall be construed to be a waiver of any such default, or acquiescence therein. The acceptance of rent by City with knowledge of a default by Tenant hereunder shall not constitute a waiver of such default.

26. Quiet Enjoyment: If Tenant shall pay the rent and perform and observe all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all times during the term hereof have the peaceable and quiet enjoyment of the Premises without interference from Landlord or any person lawfully claiming through Landlord

27. Estoppel Certificate: Within ten (10) days after written request thereof by the City, Tenant shall deliver in recordable form a statement to City, certifying any facts that are then true with respect to this Agreement, including without limitation (if such be the case), that this Agreement is in full force and effect, that Tenant is in possession and that Tenant claims no defense or set-off to the due and full performance of its obligations under this Agreement.

28. Subordination and Attornment: Tenant agrees that this Agreement shall be subject and subordinate to any mortgages now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust provided the mortgagee named in said mortgage shall agree in writing to recognize and not disturb Tenant's possession of the Premises under the terms of this Agreement in the event of foreclosure. Tenant agrees to attorn to the mortgagee under any such mortgage.

29. Notices: All notices provided for in this Agreement shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the City: City of Charleston  
Real Estate Management  
PO BOX 304  
Charleston, SC 29402

With a copy to: Office of Corporation Counsel  
50 Broad Street  
Charleston, SC 29401  
ATTN: Deputy Corporation Counsel

If to Tenant: Harry Lesesne  
Executive Director, Charleston Parks Conservancy  
P.O. Box 21000  
Charleston, S.C. 29413

With a copy to: W. Andrew Gowder, Jr.  
General Counsel, Charleston Parks Conservancy  
Pratt-Thomas Walker P.A.  
16 Charlotte Street  
Charleston, S.C. 29403

Notice shall also be sent to the holder or holders of any mortgage or deed of trust covering the Premises at such address as such holder or holders may have given by notice as herein provided. Either party hereto, or any such holder, may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

30. Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

31. Successors: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, except as otherwise provided for in this Agreement.

32. Nature and Extent of Agreement: This Agreement, including the exhibits attached hereto, contains the complete agreement between the parties regarding the terms and conditions of the Agreement of the Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Agreement may be modified only by written instrument duly executed by both parties or their respective successors in interest.

33. Environmental Matters. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Tenant's use of the Premises, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, hazardous materials ("**Hazardous Material**"), waste disposal, air emissions and other environmental matters.

If the presence of Hazardous Material on the Premises caused or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which Tenant is legally liable to City for damage resulting therefrom, then Tenant shall indemnify, defend and hold harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including reasonable attorneys' fees and court costs, which arise during or after the Agreement Term as a result of such contamination.

34. Litigation. The prevailing party shall recover all reasonable attorneys' fees and costs incurred by or on behalf of such prevailing party if (a) either party institutes litigation for a breach of the terms and conditions of this Agreement, (b) either party institutes litigation for possession of the Premises, (c) either party is made party to litigation instituted by a third party relating to the Premises. Such attorneys' fees and costs may be levied against the party whose conduct necessitated the use of an attorney whether or not litigation is prosecuted to judgment.

35. Compliance with law. Nothing herein shall be deemed to relieve Tenant from complying with all City of Charleston ordinances and regulations in its use and occupancy of the Premises.

36. Minority and Women's Business Enterprise Program. Tenant agrees to establish a Minority and Women's Business Enterprise Program in order to ensure that MWBE have equal opportunity to participate in the design and construction of the improvements on the Premises as described herein. A MWBE is a small business owned and controlled by one or more minority individuals or by one or more women. The minority or women must own 51% of the business and they must control the management and daily operations of the business in order to qualify. Tenant agrees to utilize the goals of the City's Minority Business Enterprise Program. Goals for the overall project are 20% MWBE participation which goals shall be monitored consistent with the MWBE Good Faith Effort Program established by the City's Diverse Supplier Process Improvement Team, pursuant to Section 2-268 Code of the City of Charleston entitled "Plan for the utilization of disadvantaged business enterprises (DBEs) and women business enterprises (WBEs) as same may be hereafter amended in the development of this project by agreement of the parties. Goals for some individual contracts and procurements may be adjusted depending on the availability of qualified certified MWBEs to perform all or part of the contract.

37. Non Discrimination. No covenant, agreement or other instrument shall be effected or executed by Tenant, or any of his successors or assigns, whereby the Premises or any portion

thereof is restricted by Tenant, or any successor in interest, upon the basis of race, color, religion, sex or national origin, in the use or occupancy thereof. Tenant shall comply with all applicable federal, state and local laws in effect from time to time which prohibit discrimination by reason of race, color, religion, sex or national origin in the operation and management of the Premises.

38. UPARR Compliance. Tenant acknowledges the Premises are subject to an Urban Park & Recreation Recovery Program (UPARR) grant from the Heritage Conservation & Recreation Service of the United States Department of the Interior. Notwithstanding anything in this Lease to the contrary, Tenant agrees, throughout the Term, to cooperate with monitoring conducted by or on behalf of the United States Department of the Interior, and to conform its operation of the Premises to directives issued by the Department of the Interior or applicable services or branches.

39. Contingency. This Lease is contingent on the approval of the National Park Service of the U.S. Department of the Interior or other applicable service or branch.

40. Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective Hands and Seals on the day and year first hereinabove written.

**WITNESSES:**

**CITY**

**CITY OF CHARLESTON**

\_\_\_\_\_

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

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

**TENANT**

**CHARLESTON PARKS CONSERVANCY**

\_\_\_\_\_

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

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

Exhibit A

SITE EXHIBIT

The Premises are divided into two parts.

The first part, the Café' Premises, is shown in the drawing below:

The second part is the Horse Barn, Paddock, Superintendent's House and Parking (also known as the Multi-Use Community Center), as shown in the drawing below:

Exhibit B  
MASTER PLAN