

LEASE AGREEMENT

The AGREEMENT (the “**Agreement**”) is executed in duplicate this ____ day of _____, 2017 by the CITY OF ALEXANDRIA, a municipal corporation of Virginia (the “**Lessor**”) and ARP Waterfront, LLC a Virginia Limited Liability Company (“**Lessee**”).

B. Lessee is the holder of a Special Use Permit to operate a restaurant at 101 and 107 North Union originally approved as SUP 2013-0009 by City Council in May 2013 , as amended through Special Use Permit 2017-0002 approved by City Council on March 18, 2017 and currently known as Vola’s Dockside Grill (the “**Restaurant**”) (the “**SUP**”).

A. Lessee desires to obtain the rights to use, subject to the terms and conditions of this Agreement, certain property owned by Lessor located adjacent to Restaurant.

B. Lessor is willing to permit Lessee to use the property adjacent to the Restaurant as an outdoor dining seating area associated with the Restaurant, and subject to obtaining all required permits and approvals for outdoor dining associated with the Restaurant and as generally depicted in the SUP, on the terms and conditions contained in this Agreement.

NOW THEREFORE

For and in consideration of the sum of One Hundred Dollars (\$100), the receipt and sufficiency of which is hereby acknowledged and of the Recitals which are deemed as a substantive and material part of this Agreement, Lessor and Lessee agree as follows:

1. Premises. The real property for which the Lease is granted to Lessee, consists of a portion of the City of Alexandria public right of way land shown and designated on the City of Alexandria Tax Map-Block-Lot Number 075 01-04-02 as “Torpedo Plaza and City Marina” (the “**Plaza**”) containing approximately 1225 square feet of the Plaza public right of way and more fully described and designated: “Proposed Outdoor Seating Area” on the plan titled: “Exhibit “A to the Lease Agreement Between ARP Waterfront, LLC and the City of Alexandria” prepared by Beckmann Architects attached hereto and incorporated herein by reference as Exhibit A. (the “**Outdoor Dining Area**”).

2. Lease. In exchange for the consideration described herein and based upon the terms and conditions described herein, Lessor grants Lessee a lease to use the Outdoor Dining Area for continuous periods during the term of this Agreement exclusively for outdoor seating associated with Lessee’s restaurant as described in the SUP. Notwithstanding the foregoing, provided Lessee is not in default and has obtained all required City permits and approvals, Lessee shall have the rights to improve the Outdoor Dining Area in connection with the operation of the Restaurant.

3. Term. The term of this Lease shall begin April 1, 2017 and shall continue for three (3) years from that date ending on March 31, 2020.

4. Renewal. Provided Lessee is not in default of its obligations of performance under this Agreement at the end of the three (3) year term of this Agreement, or at the end of an additional term, Lessee shall have the right to negotiate this Agreement for up to three (3) additional three (3) year terms each to be exercised by the Lessee by written notice to Lessor within six (6) months immediately preceding the expiration of the original or additional term of this Agreement. The City Manager for the City will analyze and review use of the Outdoor Dining Area by Lessee under terms of this Agreement to determine if additional or modifications to the terms of this Agreement are necessary including but not limited recalculating the annual fee. Notwithstanding this option for renewal, the City Manager shall have the right to terminate this Agreement at the end of any term if the City Manager determines the lease agreement is no longer in the best interest of the public.

5. Lease Fee. Lessee shall pay the Lessor an annual fee for the Lease rights to use the Outdoor Dining Area.

(a) *Annual Fee*. The annual fee shall be based on the lease rate per square foot of the indoor restaurant space at 101 North Union Street (\$44.29 per s.f), discounted by 29% (\$31.45). This amount will increase by 3% annually. The annual Lease Fee is therefore as follows: \$38,526.25 (year 1); \$39,682.04 (year 2); and \$40,872.50 (year 3) to be paid in quarterly installments of \$9,631.56 (year 1); \$9,920.51 (year 2); \$10,218.13 (year 3).

(b) *Due Date*. Each quarterly fee will be due on the first day of the quarter (April 1, July 1, October 1 and January 1) with the first fee due on April 1, 2017.

(c) *Payment mailing Address*. All payments shall be sent to the Lessor at the following address:

City of Alexandria
Recreation, Parks and Cultural Activities
1108 Jefferson Street
Alexandria, Virginia 22314

Checks tendered in payment of the quarterly fee shall be made payable to "City of Alexandria."

(e) *Late Payment*. In the event any payment due to the Lessor hereunder is delayed by more than thirty (30) days business days, such payment shall be deemed to increase by ten percent (10%) of the payment due. Interest on the unpaid amount shall accrue at the rate of 2.5% per month from the due date until paid.

6. Special Condition of Lease

(a) *Special Use Permit*. The Lessee is required to comply with the conditions of the SUP. Any violations of the SUP conditions that pertain to the Outdoor Dining Area shall be

considered a violation of this Agreement and the Agreement shall be subject to Termination as described in Paragraph 9 herein.

(b) *Maintenance.* The Lessor shall be responsible for the maintenance of the Outdoor Dining Area. The Lessee shall be responsible for daily trash and litter pick up and shall be responsible for all maintenance and repair of the surface of the Outdoor Dining Area, including power washing and replacement of the base material, as necessary. No objects, including but not limited to, umbrellas, storage containers, heaters, fans, and furniture, shall be placed outside of the Outdoor Dining Area. Failure of the Lessee to comply with these requirements may be considered a condition of default under Section 9 of this Lease Agreement. Lessee shall address any maintenance requests from the Lessor within fourteen (14) days from the date the request is received.

(c) *Outdoor Dining Facilities.* Any improvement placed within the Outdoor Dining Area, including but not limited to tables, chairs, umbrellas, shade devices, fencing/railing or any other facilities necessary for the use of the Outdoor Dining Area pursuant to this Agreement (“**Outdoor Dining Facilities**”) shall remain the property and the responsibility of Lessee. In the event this Agreement is terminated pursuant to Paragraph 9 herein or for any reason, Lessee shall remove the Outdoor Dining Facilities within ten (10) days of such termination and shall restore the Plaza to its current condition. Lessee shall be responsible for securing and/or the removal of Outdoor Dining Facilities to ensure public safety in response to extreme weather and high water events.

(d) *Utilities.* The addition or modification of utilities in the Outdoor Dining Facilities shall be approved in advance by the City. The Lessee shall be responsible for all costs associated with the addition or modification, including, but not limited to service fees.

(e) *Adjacent Uses.* The Outdoor Dining Area is adjacent to a portion of the property that is leased by the City to the Alexandria Waterfront Associates Limited Partnership (**AWA**) by Lease dated March 27, 1986 (“**Parcel 4A**”). Parcel 4A and the Outdoor Dining Area are directly next to each other so that if both were in use, there would be no pedestrian access area through and to the Plaza. Lessee must obtain control of Parcel 4A through an agreement with the current lessor of that property and shall leave the 21’ pedestrian path containing approximately 969 square feet as identified on Exhibit A (“Pedestrian Path”) open for pedestrian circulation at all times and shall provide signage indicating that the Pedestrian Path must remain open at all times. If Lessee at any time no longer has legal control of Parcel 4A, then this Lease shall automatically terminate and no additional payments will be due.

7. Liability

(a) *Insurance.* Lessee agrees to provide, and shall certify to the satisfaction of the Lessor that is covered by (1) liability insurance in the amount of no less than \$1,000,000 per person and \$3,000,000 per occurrence, which insures Lessee against (i) all claims of personal

injury and personal property damage arising from the use of the Outdoor Dining Area, which allege that injury or damage has been caused by negligence or gross negligence of the Lessee or the Lessee's agents and employees, and (ii) claims of personal injury and property damage arising from the use of the Outdoor Dining Area. Lessor shall be named as an additional insured in the policy required by this paragraph 7(a). In the event the Lessee is unable to obtain the required insurance naming Lessor as a named insured, or the required insurance lapses, this Lease Agreement shall terminate unless, by amendment to this Agreement acceptable to the Lessor, Lessee agrees to indemnify and hold harmless Lessor and all of its agents, officers and employees from and against any and all claims identified in paragraph 7(a), including any and all suits, damages, judgments, liability, losses and costs including reasonable attorneys' fees and expenses, associated with such claims. Lessee agrees to maintain insurance coverage required by this provision throughout the term of this Agreement and furnish evidence to Lessor of such prior to the issuance of the Certificate of Occupancy for the Restaurant and throughout the term of this Agreement.

(b) *Indemnification.* Subject to the dollar limitations set out in paragraph 7(a), Lessee agrees to indemnify and hold harmless the Lessor and all of its officers, employees and agents from and against all suits, action, causes of action, damages, claims, liability and expenses (including court costs and attorneys' fees), and against any losses incurred by Lessor, resulting from and arising out of any act or omission of the Lessee or any of its employees, agents, invitees, licenses or guests in the course of operating, maintaining or using the Outdoor Dining Area.

(c) *Waiver of Lessor's Liability.* By executing this Agreement, Lessee expressly acknowledges and agrees that the Lessor and its officers and employees shall not be liable to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on the Outdoor Dining Area, or for any property damage to Lessee's facilities located within the Outdoor Dining Area, except to the extent such injury or damage is caused by negligence of the Lessor or its officers or employees.

8. Applicability of Federal, State and Local Laws. This Agreement is subject to the Alexandria City Code, and all applicable provisions of federal and state law. In particular, this Agreement is subject to, Lessee shall comply with criminal, fire, health, and safety laws of the City of Alexandria and the Commonwealth of Virginia. Lessee shall permit officers of the City of Alexandria charged with enforcement of such laws to inspect the Outdoor Dining Area during periods of the Lessee's Use.

9. Termination. In the event the Lessee violates any term of this Agreement, Lessee shall be considered in default. If such continues for a period of thirty (30) days after the Lessee has received written notice of the default, the Lessor may terminate this Agreement effective immediately unless such default is such a nature it cannot be cured within such thirty (30) day period, in which case, Lessee may request that the Lessor agree to extend the cure period for a

reasonable amount of time to effect such a cure and such agreement shall not be reasonable withheld by Lessor. Further, Lessor shall have the right to terminate this Agreement, effective immediately, in the event the Restaurant, as may be amended through subsequent approvals, is no longer in operation.

10. Assignment. The Agreement shall not be assigned by Lessee without the written consent of the Lessor, which consent may not be unreasonably withheld, but may require the approval of the Alexandria City Council. An assignment by Lessee to an affiliate, which is under the control of the Lessee or formed for the purpose of operating the Restaurant for Lessee, shall not require the Lessor's consent.

11. Quiet Enjoyment. Lessor covenants that it has full right, power and authority to enter into this Agreement and the Lessee, upon paying the annual Lease fee, and performing all of Lessee's other obligations pursuant to the Agreement, shall peaceably and quietly have, hold and enjoy the Outdoor Dining Area during the term of this Agreement and any renewal terms, without hindrance, ejection or molestation by any person lawfully claiming by, through or under Lessor, or as a member of the general public. Lessor will vigorously defend all challenges to its authority to enter into this Agreement.

12. Governing Law. The Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

{Signatures to follow}

IN WITNESS WHEREOF

The parties have affixed their signatures and seals as of the date first above written.

The ARP Waterfront, LLC, a Virginia limited liability company

By _____
Name: _____
Title: _____
Date _____

CITY OF ALEXANDRIA a municipal corporation of the Commonwealth of Virginia

By: _____
Mark Jinks
Its: City Manager
Date: _____

Approved as to form:

City Attorney

