

AN ORDINANCE No. 87-24-32  
ADOPTED FEB 23 1987

To authorize the City Manager, for and on behalf of the City of Richmond, to execute an agreement with Richmond-On-The-James, Inc., concerning lease of the concrete dock at Richmond Intermediate Terminal, 3201 Wharf Street.

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Patron - Mr. Kenney, Mrs. Wake

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Approved as to form and legality  
by City Attorney

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THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the City Manager, for and on behalf of the City of Richmond, be and is hereby authorized and directed to execute an agreement with Richmond-On-The-James, Inc., concerning lease of the concrete dock at Richmond Intermediate Terminal, 3201 Wharf Street, said agreement to be approved as to form by the City Attorney and to be substantially in the form of the draft attached hereto.

§ 2. This ordinance shall be in force and effect upon adoption.

A G R E E M E N T

THIS AGREEMENT is hereby made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 1987, by and between the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia, ("Landlord"), and RICHMOND-ON-THE-JAMES, INC., a Virginia non-profit corporation ("Tenant").

RECITALS OF THE PARTIES

A. Landlord is the owner of all that certain land located in the City of Richmond, Virginia, more particularly described as the concrete dock at the Richmond Intermediate Terminal, 3201 Wharf Street (the "Property").

B. Tenant is a non-profit corporation established and operated for the purpose of promoting tourism in the City of Richmond.

C. Landlord and Tenant desire to enter into a lease agreement providing for the operation of the Property by Tenant as a terminal for one or more cruise boats, in connection with a cruise boat program of a nature and quality satisfactory to Landlord.

D. Use of the Property in the above-described manner will serve Landlord's interest in assuring the availability of high quality, innovative, and diversified entertainment and

tourist programs which can be offered to the City's visitors and residents at a reasonable price.

IN CONSIDERATION of the foregoing and the rent, covenants and agreements set forth herein, the parties do hereby covenant and agree as follows:

#### ARTICLE I

#### DEMISE AND LEASE TERM; CONDITIONS OF LEASE

Landlord demises and leases to Tenant, and Tenant rents from Landlord, the Property, for a term commencing on the date hereof and continuing for five (5) years. This Lease is subject to nonexclusive easement rights granted to RECO Industries, Inc. for loading large tanks on barges, pursuant to City Council Resolution No. 81-R114-108, adopted September 14, 1981 and the franchise granted the Restaurant Company by the Landlord, by Ordinance No. 81-150-144, adopted September 14, 1981. This Lease shall further be subject to Landlord's right to use the Property for its own purposes, to the temporary exclusion of use by Tenant, as necessary for the public health, safety or welfare, and upon such reasonable advance notice as may be afforded to Tenant. This Lease shall further be subject to Landlord's right to use the Property for docking of cargo vessels coordinated through the Port of Richmond on a space available basis so long as the operation of the cargo vessels does not interfere with ordinary operation of the cruise boat

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program. Subject to the above restrictions, and upon prior approval of the Landlord, such approval to be obtained from the City Manager, Tenant may sublet or in other appropriate manner assign any of its rights under this Lease to one or more cruise boat operators.

## ARTICLE II

### RENT

As rent for the Property, Tenant shall pay to Landlord an annual rent equal to One Dollar (\$1.00). All such rent shall be paid to Landlord at the office of Landlord at the address specified in Article XIII, or at such other place as Landlord may designate in writing.

## ARTICLE III

### USE AND MAINTENANCE OF PREMISES

Tenant agrees that it will use the Property and allow the Property to be used as a terminal for one or more cruise boats, in connection with a cruise boat program of a nature and quality satisfactory to Landlord. Notwithstanding the foregoing, Tenant shall not (a) use the Property or permit its use for any other purposes, without an appropriate form of approval having been obtained from Landlord; (b) violate any legal requirement applicable to the Property or its use in connection with a

cruise boat program; or (c) use the Property or permit its use so as to preclude the exercise of rights reserved to Landlord or which have been previously conferred upon other parties by Landlord, as referred to in Article II above. Tenant agrees to continuously maintain the Property, or cause the same to be maintained, in good condition and repair throughout the term of this lease; provided that maintenance and repair of the structure of the dock, necessitated by any reason other than the negligence or fault of Tenant, shall remain the responsibility of Landlord. Tenant shall notify and obtain the approval of Landlord before undertaking any improvement or modification of the Property for its own purposes.

#### ARTICLE IV

#### PROCEEDS FROM OPERATION OF PROPERTY AS CRUISE BOAT TERMINAL

Tenant agrees that any rent received in connection with an approved sublease of the Property, or any other fee or income of any kind received by Tenant in connection with the use of the Property as a terminal for one or more cruise boats shall be deposited in an interest-bearing account, and shall be used for (i) payment of direct costs incurred by Tenant related to the promotion and operation of a cruise boat program; (ii) payment of Tenant's reasonable administrative costs allocated to cruise boat program activities; (iii) the maintenance and repair of the Property; or (iv) any approved modification, restoration, or

improvement of the Property. Any income derived by the Tenant over and above the amount necessary to fund Tenant's obligations hereunder shall be committed to and expended in furtherance of Tenant's efforts to promote tourism in the City of Richmond. Tenant shall at all times conduct its activities hereunder so as to maintain its non-profit status, and its failure to do so shall be cause for the termination of this Lease.

Tenant shall maintain good, current and complete books and records showing the receipt of any and all income and the expenditures of any income it derives from the use of the Property as a terminal for a cruise boat program; and a report of such income and expenditures shall be made to Landlord (or its designee) on an annual basis, on or before a date certain to be established by the Landlord (or its designee) in coordination with Tenant. All such books and records shall be kept at Tenant's office in the City of Richmond, Virginia, and shall be available for inspection by Landlord (or its designee) at any time. In addition, Tenant shall, within thirty (30) days of receipt of a request from Landlord (or its designee), furnish to Landlord (or its designee) a statement certified as correct by the president or treasurer of Tenant showing all income received and/or the expenditures of any income it derives from the use of the Property in the manner permitted hereunder. At the termination of this Lease, whether at the end of the term thereof or at any earlier termination, Tenant shall surrender and deliver to Landlord the unspent balance of any net income

derived from such use of the Property, following satisfaction of any and all of Tenant's financial obligations relating to the Property and its use.

## ARTICLE V

### INSURANCE

Tenant shall maintain or cause to be maintained at no expense to Landlord, throughout the term of this Lease:

5.1 Hazard Insurance. Insurance on any and all approved modifications or improvements which the Tenant may make for its own purpose, against loss or damage by fire, lightning, collapse and all of the hazards included in an extended coverage endorsement. Such insurance shall be in an amount equal to but not less than One Hundred Percent (100%) of the actual replacement cost of the improvements located upon the Property.

5.2 Liability Insurance. Broad form comprehensive public liability and property damage insurance against claims for personal injury or death, or property damage suffered by others occurring on or about the Property and the improvements thereon, such public liability insurance to afford protection to the limit of not less than one million dollars (\$1,000,000) combined single limit for bodily injury and property damage with respect to any one accident or occurrence. All such insurance shall, by its terms, be primary and noncontributory with respect to any other insurance carried by Landlord. All policies for liability

insurance shall name Tenant as the named insured and Landlord as an additional insured.

5.3 Insurance Policies. All insurance required by this Article shall (i) name Tenant as the named insured and Landlord as an additional insured, (ii) be carried by companies licensed in the Commonwealth of Virginia acceptable to Landlord, and (iii) be cancellable only after thirty (30) days written notice to Landlord.

5.4 Certificates of Insurance. Tenant shall provide to Landlord certificates of insurance evidencing all such policies of insurance and renewals thereof before the effective date thereof, and in the case of renewals, at least thirty (30) days prior to the expiration of the policy being renewed.

## ARTICLE VI

### INDEMNIFICATION BY TENANT

Tenant agrees to defend, indemnify and save Landlord harmless from and against all claims, loss, damages, costs and expenses, including reasonable counsel fees, (i) because of personal injury to or death of persons or destruction of property resulting from or arising out of Tenant's use, occupancy or possession of the Property, or (ii) arising out of Tenant's scheduling of activities on the Property, including the denial or limitation of the use of the Property by members of the public. There shall be included in the foregoing

indemnification the results of the negligent or willful acts or omissions of Tenant or its contractors, servants, employees, agents, licensees, guests, permittees, or subtenants.

#### ARTICLE VII

#### PUBLIC UTILITY CHARGES

Tenant shall pay, or cause to be paid, all charges for all gas, electricity, water, sewerage, telephone and other services rendered or supplied to or used on the Property during the term of this Lease, before they become delinquent.

#### ARTICLE VIII

#### NO ALTERATIONS

Tenant shall have no right to make any alterations to the Property or the improvements thereon without the prior written consent of Landlord.

#### ARTICLE IX

#### DAMAGE AND DESTRUCTION

In the event of the damage or destruction of the Property or the improvements thereon from any cause fairly attributable to the Tenant or any subtenant, Tenant shall forthwith and with

all due diligence repair the same at Tenant's cost and expense. Such damage or destruction shall in no way annul or void this Lease.

#### ARTICLE X

#### ASSIGNMENT AND SUBLETTING

Tenant may neither assign this Lease, in whole or in part, nor sublet all or any part of the Property without the prior written consent of the Landlord, which consent Landlord shall not unreasonably withhold. The consent by Landlord to any such assignment or subletting by Tenant shall not constitute a waiver of the necessity for such consent as to any subsequent assignment or subletting. Notwithstanding any assignment or subletting, Tenant shall remain liable in accordance with the terms and conditions hereof, and Tenant shall not be released from the obligation of performing any of the terms, covenants and conditions of this Lease.

#### ARTICLE XI

#### DEFAULT

11.1 Definition. It shall be an "Event of Default" if Tenant fails (a) to pay any sum which it is obligated to pay by any provision of this Lease, when it is due and payable hereunder without demand therefor; or (b) to perform any of its

other obligations under or breaches any covenant contained in this Lease; or (c) to provide adequate assurances to Landlord that the Property will be used, on a continuing basis, in connection with a cruise boat program of a nature and quality satisfactory to Landlord.

11.2 Landlord's Rights on Event of Default. On the occurrence of any Event of Default, Landlord may (a) re-enter and repossess the Property; (b) demand that Tenant cure such Event of Default within a reasonable time as determined by Landlord, not to be less than ninety (90) days; (c) cure such Event of Default in any other manner, in which event all expenses incurred by Landlord in doing so shall be additional rent and shall be payable by Tenant immediately upon the demand therefor by Landlord; (d) terminate this Lease; and (e) pursue any combination of such remedies and or other remedy available to Landlord under applicable law.

11.3 No Waiver. No action taken by Landlord under the provisions of this Article shall operate as a waiver of any right or election of any remedy which Landlord would otherwise have against Tenant for any loss or damage suffered by Landlord by reason of any Even of Default.

ARTICLE XII

PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS

If any mechanics' liens shall at any time be filed against the Property relating to Tenant's activities thereon, Tenant shall promptly take and diligently prosecute appropriate action to have the same discharged.

ARTICLE XIII

NOTICES

Any notice, demand, consent, approval, request or other communication or document shall be in writing and shall be sent as certified or registered mail in the United States mail, postage prepaid, return receipt requested, to the address of such party set forth hereinafter:

If to Landlord:

Robert C. Bobb  
City Manager  
Room 200, City Hall  
900 East Broad Street  
Richmond, Virginia 23219

With a copy to:

Drew St. J. Carneal  
City Attorney  
Room 300, City Hall  
900 East Broad Street  
Richmond, Virginia 23219

If to Tenant:

Anne Greer  
Executive Director  
Richmond On the James  
1805 East Broad Street  
Richmond, Virginia 23223

#### ARTICLE XIV

##### GENERAL

14.1 Amendment. This Lease may be amended by and only by an instrument executed and delivered by each party hereto.

14.2 Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing.

14.3 Applicable Law. This Lease shall be given effect and construed by application of laws of Virginia.

14.4 Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

IN WITNESS WHEREOF, each party hereto has caused this Lease to be executed on its behalf by its duly authorized representative, the day and year first above written.

LANDLORD:

CITY OF RICHMOND,  
a municipal corporation

By: \_\_\_\_\_  
City Manager

Approved as to form:

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

TENANT:

RICHMOND-ON-THE-JAMES, INC.,  
a Virginia non-profit  
corporation

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

Title: \_\_\_\_\_