

CAPITAL LEASE AGREEMENT

Between

THE CITY OF ROCKY MOUNT, NORTH CAROLINA

and

HUNT SERVICES, INC.

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CAPITAL LEASE AGREEMENT

THIS CAPITAL LEASE AGREEMENT (this “Capital Lease”) is made and entered effective as of [____], 2019 (the “Effective Date”) by and between the **CITY OF ROCKY MOUNT, NORTH CAROLINA**, a municipal corporation duly created under the laws of the State of North Carolina (the “City”), and **HUNT SERVICES, INC.**, a Tennessee corporation authorized to do business in North Carolina (as more particularly described below, the “Developer”).

Recitals

WHEREAS, the City has determined that the development of a hotel, retail, residential and parking facilities in the area around the Rocky Mount Event Center is critical to the revitalization of downtown Rocky Mount, and has determined to develop a critically needed parking facility under the provisions of N.C.G.S. Section 143-128.1C that permit public-private partnerships to construct certain capital improvement projects (the “PPP Act”); and

WHEREAS, the Developer is experienced in the development of hotels, retail, residential and parking facilities in urban areas; and

WHEREAS, the City reviewed the qualifications of the Developer to serve as its development partner to develop a critically needed parking facility as part of a mixed-use project, commonly known as Event Center Village, consisting of a hotel, a mixed-use building and the Parking Facility (as defined below, and collectively hereinafter referred to as the “Project”) to be developed on certain real property located within the corporate limits of the City, including an approximately 2.45 acre parcel owned by the City, including review of the Developer’s: (i) financial stability, (ii) experience in constructing developments such as the Project, (iii) experience and that of its project team and its proposed method of design and construction of the Project, and (iv) proposed timeline for construction; and

WHEREAS, after conducting such review, the City and has determined to enter into that certain Project Development and Cooperation Agreement dated as of August [___], 2019 (the “Project Agreement”), the Ground Lease (as defined in Article 3 below) and this Capital Lease in order to accomplish the purposes set forth herein; and

WHEREAS, the City and the Developer have agreed to cooperate with each other in order to facilitate the planning, design, financing, construction, and operation of the Project; and

WHEREAS, as part of the Project, the Developer will construct a structured parking facility providing at least 700 spaces that meets the minimum requirements set forth in Section 3.6(b) of the Project Agreement (the “Parking Facility”), and will lease it to the City pursuant to the terms and conditions of this Capital Lease; and

WHEREAS, it is the intent of the City and the Developer that the development of the Project and the design, construction and leasing of the Parking Facility constitute a public-private project and that the Project Agreement be a “development contract” under the PPP Act; and

WHEREAS, it is also the intent of the City and the Developer that the terms and conditions of this Capital Lease be provided as security to the Construction Lender (as defined in the Project Agreement) or any successor lender with respect to the Parking Facility; and

WHEREAS, the parties hereto have common and compelling interests in developing the Project, and the Parking Facility in particular, in order to foster the success of the Rocky Mount Event Center and the revitalization of downtown Rocky Mount.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

ARTICLE 1

Definitions and Other Provisions of General Application

SECTION 1.1 Definitions

For all purposes of this Capital Lease, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meaning assigned in the Project Agreement.

SECTION 1.2 General Rules of Construction

For all purposes of this Capital Lease, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Defined terms in the singular shall include the plural as well as the singular, and vice versa.
- (b) The definitions in the recitals to this Capital Lease are for convenience only and shall not affect the construction of this Capital Lease.
- (c) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to “generally accepted accounting principles” refer to such principles as they exist at the date of application thereof.
- (d) All references in this Capital Lease to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this Capital Lease as originally executed.
- (e) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Capital Lease as a whole and not to any particular Article, Section or other subdivision.
- (f) All references in this Capital Lease to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
- (g) The term “person” shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.
- (h) The term “including” means “including without limitation” and “including, but not limited to”.

SECTION 1.3 Effect of Headings and Table of Contents

The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 1.4 Severability Clause

If any provision in this Capital Lease shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 1.5 Governing Law

This Capital Lease shall be construed in accordance with and governed by the laws of the State of North Carolina. Each party hereto consents to and submits to in personam jurisdiction and venue in the Edgecombe County, North Carolina and in the federal district courts for the Eastern District of North Carolina.

SECTION 1.6 Counterparts

This Capital Lease may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 1.7 Entire Agreement

This Capital Lease contains the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, including commitments or understandings with respect to such matters.

ARTICLE 2

Demising Clause

For and in consideration of the performance and observance by the City of the agreements and covenants of this Capital Lease to be performed and observed by the City, the Developer does hereby lease and demise to City, and City does hereby lease, take and hire from the Developer the following property constituting the Parking Facility, subject to this Capital Lease:

I.

Buildings and Structures

All buildings and structures now or hereafter located on the portion of the real property described in Exhibit A to this Capital Lease (the "Site") consisting of the Parking Facility, including the buildings and structures to be constructed, altered or improved as part of the Parking Facility, and the Premises (as defined below). The Parking Facility and all appurtenances and easements benefitting, belonging or pertaining to the Parking Facility together with an easement over all of the pedestrian and vehicular ingress/egress areas located on, benefitting, or providing access to the Parking Facility are hereinafter collectively referred to as the "Premises".

II.

Personal Property and Fixtures

The following personal property and fixtures: (i) all personal property and fixtures to be acquired and installed within the Parking Facility, (ii) all personal property and fixtures acquired by (or in the name of) the Developer and installed on such real property as a substitute or replacement for personal property or fixtures transferred or otherwise disposed of pursuant to the terms of this Capital Lease, and (iii) all personal property and fixtures acquired by (or in the name of) the Developer and installed on such real property with the proceeds of any insurance or condemnation award.

SUBJECT, HOWEVER, to the Permitted Encumbrances, which are described in Exhibit B to this Capital Lease.

ARTICLE 3

Ownership and Construction of the Parking Facility

The Site on which the Parking Facility is to be constructed is owned by the City and ground leased to the Developer pursuant to the terms of that certain Ground Lease dated of even date herewith (the "Ground Lease") between the City and the Developer; however, to the maximum extent permitted under federal and state laws, the Developer shall be treated as the owner of the Parking Facility for the duration of the Capital Lease Term (as defined below). For the avoidance of doubt, at all times during the Capital Lease Term, the Parking Facility shall be the property of the Developer, but shall remain on the Site throughout such Capital Lease Term. During the Capital Lease Term, the Developer alone shall be entitled to all of the tax attributes of ownership of the Parking Facility and all personal property acquired (or leased) by the Developer, including, without limitation, the right to claim depreciation or cost recovery deductions or any federal or state tax credits. This Capital Lease shall not (i) impact in any way all the benefits and burdens of ownership of the Parking Facility by the Developer or (ii) cause the Developer to not be treated as the owner of the Parking Facility. The parties agree to treat this Capital Lease in a manner consistent with this intention, including, on the part of the Developer, filing all income tax returns and other reports consistent with such treatment. The City will not claim any tax credits, depreciation or any other federal or state income tax benefits with respect to the Parking Facility, or take any action which is inconsistent with this provision. The City shall have no liability for the tax treatment of the ownership of the Parking Facility by the Internal Revenue Service or the North Carolina Department of Revenue. The provisions of this paragraph shall not affect the treatment of the Parking Facility on the financial statements of the City.

The Developer shall construct the Parking Facility on the Site in accordance with the Project Agreement, including satisfaction of the minimum requirements set forth in Section 3.6(b) thereof. The buildings and structures to be constructed as part of the Parking Facility are described or depicted in Exhibit A to this Capital Lease.

ARTICLE 4

Capital Lease Term and Lease Payments

SECTION 4.1 Capital Lease Term

The term of this Capital Lease and the obligations of the parties hereunder shall begin on the Effective Date. The term of occupancy by the City under this Capital Lease (the "Capital Lease Term")

shall begin on the date of the completion of the Parking Facility (the “Commencement Date”), as evidenced by the issuance of a certificate of occupancy, and shall continue for twenty (20) years thereafter.

SECTION 4.2 Basic Lease Payments

(a) The City shall make payments (“Basic Lease Payments”) to the Developer on a [quarterly] basis, beginning on the Commencement Date and on the first day of each calendar [quarter] thereafter in an amount equal to the Final Parking Facility Costs, amortized over twenty (20) years in equal [quarterly] installments at an interest rate equal to the City’s Cost of Capital; provided, however, that any Basic Lease Payment for any fractional [quarter] shall be prorated based on a [ninety (90) day quarter]). The Final Parking Facility Costs will be determined in accordance with the Project Agreement. The estimated [quarterly] Basic Lease Payments, subject to modification based on the Final Parking Facility Costs, is \$[●].

(b) All payments by the City pursuant to this Section 4.2 shall be made in funds immediately available to the Developer by wire transfer on or before the due date of such Basic Lease Payments.

SECTION 4.3 Overdue Payments

Any Basic Lease Payment or Additional Lease Payment that is not paid within ten (10) days of when due shall bear interest from its due date until paid at the lesser of eight percent (8%) per annum or the maximum lawful rate of interest permitted by applicable law.

ARTICLE 5

The Parking Facility

SECTION 5.1 Possession, Use of Parking Facility and Parking Revenue

(a) So long as no Lease Default (as defined in Section 7.1 below) exists, the City shall be permitted to possess, use, operate and enjoy the Parking Facility without hindrance on the part of the Developer, subject, however, to all the terms and conditions of this Capital Lease, the Developer’s right to the exclusive use of 140 reserved parking spaces within the Parking Facility (collectively, the “Exclusive Spaces”) and the terms of any separate agreement between the City and Rocky Mount DCF, LLC. The Developer will designate the Exclusive Spaces, which will be used by the Developer for guests of the Hotel. Such spaces will be clearly marked and will not be available for use by the City for the benefit of the general public. As more particularly described in Section 8.2 below, the Developer’s right to use the Exclusive Spaces shall extend beyond the Capital Lease Term and be conterminous with the expiration of the term of the Ground Lease (the “Ground Lease Term”). The City and the City’s agents, employees, subtenants, assignees, licensees, contractors or invitees, including the general public, shall also have the right of access, ingress and egress over, under, through and upon the Premises in order to utilize the Premises for vehicular and pedestrian access to the Parking Facility.

(b) The Developer, the Hotel franchisee, and their respective guests, invitees, visitors, patrons, licensees, suppliers, agents, officers, managers, members, shareholders, owners, employees, workers, representatives, contractors, successors and assigns shall be permitted such possession of the Parking Facility as shall be necessary and convenient at any time throughout the Ground Lease Term to access the Exclusive Spaces.

(c) Commencing on the first calendar day of the [quarter] following the date that the Parking Facility is “substantially complete” as evidenced by the issuance of a certificate of occupancy and continuing on the first Business Day of every calendar [quarter] thereafter, the Developer shall remit to the

City, throughout the Capital Lease Term, the total gross revenue generated from the operation of the Parking Facility less (i) as a management fee, an amount equal to three percent (3%) of the total gross revenue generated from the operation of the Parking Facility during the prior [quarter], (ii) in order to fund a renewal and replacement reserve, an amount equal to four percent (4%) of the total gross revenue generated from the operation of the Parking Facility during the prior [quarter] (the “Renewal and Replacement Reserve Fee”) and (iii) the City’s pro rata share of the Developer’s costs of providing the required insurance under the Ground Lease with respect to the Parking Facility during the prior [quarter] (collectively, “Net Parking Revenue”).

SECTION 5.2 Maintenance and Other Operating Expenses

The Developer will, at its own expense, (a) maintain the Parking Facility in good condition, repair and working order, except for ordinary wear and tear; (b) care for and maintain the grounds around the Parking Facility, including the regular mowing of grass, care of shrubs and general landscaping; (c) maintain the whole of the Parking Facility in a clean condition; and (d) promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, repairs and replacements of every kind which may be required to keep the Parking Facility in such good condition, repair and appearance. The Developer’s obligation extends to both interior and exterior items and includes, without limitation, maintenance, repair, and replacement of the surfaces and walls of the Parking Facility, doors and passageways, equipment, fixtures, all pavement (asphalt, concrete, or other types which may be on the Parking Facility and including re-striping and repaving same and removing any ice, snow and rubbish thereon). The City and the Developer acknowledge that the Developer will be collecting from the City the Renewal and Replacement Reserve Fee, and that such amounts will be available to and used by the Developer to perform the maintenance and repairs required by this Section; provided that, to the extent the amount of the Renewal and Replacement Reserve Fee is insufficient to cover such costs, the Developer shall nevertheless be responsible for the maintenance and repairs required by this Section.

Except in the event of an emergency in which no prior approval shall be required, with written approval from the City, which approval shall not be unreasonably withheld, conditioned or delayed, the Developer may at any time and from time to time close all or any portion of the Parking Facility to make repairs, improvements, alterations or changes.

The Developer shall also pay all gas, electric, water, sewer and other charges for the operation, use and upkeep of the Parking Facility.

SECTION 5.3 Taxes, Assessments, Etc.

The Developer will pay all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Parking Facility or any part thereof or upon any income therefrom; provided, however, that the Developer shall not be required to pay and discharge any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings.

SECTION 5.4 Improvements, Alterations, Etc.

The Developer may, at its own expense, make additions, improvements or alterations to the buildings and structures constituting a part of the Parking Facility so long as such additions, improvements or alterations do not interfere with the use by the City or the general public of the Parking Facility or change the number of parking spaces available to the City.

SECTION 5.5 Leasehold Deed of Trust; Assignment by Developer

The City agrees that the Developer may, without the prior written consent, authorization or other acknowledgment of the City, grant a leasehold mortgage, collateral assignment or assignment as security with respect to the rights, interests and estates of the Developer under this Capital Lease or its rights, interests and estates in the Parking Facility, and assign its rights under this Capital Lease to an Affiliate of the Developer or an Affiliate of Hunt Properties, an unincorporated Tennessee general partnership (“Hunt Properties”) so long as Hunt Services, Inc. remains liable for the obligations of the Developer under this Capital Lease, either as co-Developer or as guarantor. In the event of an assignment to an Affiliate of the Developer or an Affiliate of Hunt Properties, the Developer shall notify the City in writing within fifteen (15) days prior to the effective date of any such assignment together with evidence reasonably satisfactory to the City of Hunt Services, Inc.’s continued obligation with respect to this Capital Lease.

SECTION 5.6 The City’s Personal Property and Fixtures

(a) The City may, at its own expense, install at the Parking Facility any personal property or fixtures which, in the City’s judgment, are necessary or desirable for the conduct of the business carried on by the City at the Parking Facility. Any such personal property or fixtures which are installed at the City’s expense and which do not constitute a part of the personal property and fixtures subject to this Capital Lease shall be and remain the property of the City and may be removed by the City at any time while no Lease Default exists; provided, that any damage to the Parking Facility occasioned by such removal shall be repaired by the City at its own expense.

(b) If any personal property or fixtures described in this Section are leased by the City or the City shall have granted a security interest in such property in connection with the acquisition thereof by the City, then the lessor of such property or the party holding a security interest therein, as the case may be, may remove such property from the Parking Facility even though a Lease Default shall then exist or this Capital Lease shall have been terminated following a Lease Default hereunder; provided, that the foregoing permission to remove shall be subject to the agreement by such lessor or secured party to repair at its own expense any damage to the Parking Facility occasioned by such removal.

SECTION 5.7 Insurance

The Developer shall be required to maintain casualty and liability insurance with respect to damage or destruction of the Parking Facility in accordance with the terms of the Ground Lease.

SECTION 5.8 Damage and Destruction

If the Parking Facility is damaged or destroyed by fire or other casualty, the Developer shall use the proceeds of any insurance to repair or replace the Parking Facility damaged or destroyed. Any property acquired by the Developer in connection with such repair or replacement shall become a part of the Parking Facility subject to this Capital Lease.

SECTION 5.9 Condemnation

(a) If title to, or the use of, the Parking Facility or any part thereof shall be taken by the exercise of the power of eminent domain, the entire proceeds of any related award shall be paid to the Developer. The Developer shall not be required to replace the property so taken. Any property acquired by the Developer in connection with any replacement shall become a part of the Parking Facility subject to this Capital Lease. The Basic Lease Payments payable hereunder during the unexpired portion of the Capital

Lease Term shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority.

(b) The Developer shall cooperate in good faith with the City in the conduct of any condemnation proceeding with respect to the Parking Facility. The Developer will not settle, or consent to the settlement of, any condemnation proceeding without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 6

Representations and Covenants

SECTION 6.1 General Representations

The City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a municipal corporation duly created under the laws of the State of North Carolina and the City has duly authorized the execution and delivery of this Capital Lease and the consummation of the transactions contemplated hereby.

(b) The City has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the execution and delivery of this Capital Lease.

(d) The execution and delivery by the City of this Capital Lease and the consummation by it of the transactions contemplated hereby will not (1) conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under any agreement, instrument, order or judgment to which it is a party or is subject, or (2) result in or require the creation or imposition of any lien of any nature upon or with respect to the Parking Facility other than the encumbrance created by this Capital Lease.

SECTION 6.2 Corporate Existence

(a) The City will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises.

(b) The City may not consolidate with or merge into any other entity or transfer its property substantially as an entirety to any person unless:

(1) the entity into which the City is merged (the "Successor") shall execute and deliver to the Developer an instrument in form acceptable to the Developer containing an assumption by the Successor of the performance and observance of every covenant and condition of this Capital Lease to be performed or observed by the City;

(2) immediately after giving effect to such transaction, no Lease Default, or any event which upon notice or lapse of time or both would constitute such a Lease Default, shall have occurred and be continuing; and

(3) the City shall have delivered to the Developer a certificate executed by the City and an opinion from counsel acceptable to the Developer, each of which shall state that such

consolidation, merger, conveyance or transfer complies with this Section and that all conditions precedent herein provided relating to such transactions shall have been complied with.

(c) Upon any consolidation or merger or any conveyance or transfer of the City's property substantially as an entirety in accordance with this Section, the Successor shall succeed to, and be substituted for, and may exercise every right and power of, the City under this Capital Lease with the same effect as if such Successor had been named as the City herein.

SECTION 6.3 Inspection of Records

The City will at any and all times, upon the written request of the Developer, permit the Developer by its representatives to inspect the Parking Facility. The Developer will, upon the written request of the City, permit the City to inspect its books, records, reports and other papers relating to the operation of the Parking Facility in connection with the remission by the Developer of Net Parking Revenue to the City in accordance with Section 5.1(c) above.

SECTION 6.4 Indemnities

(a) To the extent permitted by law, the City shall indemnify and hold harmless the Developer from and against any and all claims arising from the City's use of the Premises, or from any activity, work or things done, permitted or suffered by the City in the Premises on or after the Commencement Date and shall further indemnify and hold harmless the Developer from and against any and all claims arising from any Lease Default (as defined in Section 7.1 below) or breach in the performance of any obligation on the City's part to be performed under the Capital Lease Term, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the Developer by reason of any such claim, the City upon notice from the Developer shall defend the same at the City's expense by counsel reasonably satisfactory to the Developer.

(b) The Developer shall indemnify and hold harmless the City from and against any and all claims arising from the Developer's activity, work or things done, permitted or suffered in or about the Premises by the Developer prior to or after the Commencement Date and shall further indemnify and hold harmless the City from and against any and all claims arising from any breach or default in the performance of any obligation on the Developer's, or any of the Developer's agents, contractors or employees part to be performed under the terms of this Capital Lease, and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against the City by reason of any such claim, the Developer upon notice from the City shall defend the same at the Developer's expense by counsel reasonably satisfactory to the City.

(c) Notwithstanding (a) and (b) above, each of the City and the Developer releases the other, and its employees, agents, and representatives, from liability, and waives its entire right of recovery against the other for loss or damage occurring in or about the Premises to the extent such loss or damages is covered under fire, casualty and all risk insurance policies, including extended coverage endorsements, carried by the parties. Each party agrees that each such insurance policy obtained by it with respect to the Premises or any personal property shall include a waiver by the insurer of its subrogation rights for such losses and damages. The foregoing mutual waivers shall be effective only so long as such waivers are available in the State of North Carolina and do not invalidate the insurance coverage.

ARTICLE 7

Lease Default; Remedies

SECTION 7.1 Events of Default of the City

Any one or more of the following shall constitute an event of default (a “Lease Default”) under this Capital Lease (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) default in the payment of any Basic Lease Payment when such Basic Lease Payment becomes due and payable; or
- (b) an Act of Bankruptcy by the City; or
- (c) default in the performance, or breach, of any covenant or warranty of the City in this Capital Lease (other than a covenant or warranty, a default in the performance or breach of which is elsewhere in this Section specifically dealt with), and the continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder.

For purposes of this Section, an “Act of Bankruptcy” shall mean the appointment of a receiver, liquidator or trustee of the designated entity or any of its properties or assets; or a general assignment by the designated entity for the benefit of the creditors thereof; or the commencement of proceedings by or against the designated entity under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, now or hereafter in effect.

SECTION 7.2 Remedies on Default

If a Lease Default occurs and is continuing, the Developer may exercise any of the following remedies:

- (a) declare all installments of Basic Lease Payments for the remainder of the term of this Capital Lease to be immediately due and payable;
- (b) reenter the Parking Facility, without terminating this Capital Lease, and, upon ten (10) days’ prior written notice to the City, relet the Parking Facility or any part thereof for the account of the City, for such term (including a term extending beyond the term of this Capital Lease) and at such rentals and upon such other terms and conditions, including the right to make alterations to the Parking Facility or any part thereof, as the Developer may deem advisable, and such reentry and reletting of the Parking Facility shall not be construed as an election to terminate this Capital Lease nor relieve the City of its obligations to make payments required by this Capital Lease and to perform and observe any of its other agreements and covenants under this Capital Lease, all of which shall survive such reentry and reletting, and the City shall continue to make all payments required by this Capital Lease until the end of the term of this Capital Lease, less the net proceeds, if any, of any reletting of the Parking Facility after deducting all of the Developer’s expenses in connection with such reletting, including all repossession costs, brokers’ commissions, attorneys’ fees, alteration costs and expenses of preparation for reletting;

(c) terminate this Capital Lease, exclude the City from possession of the Parking Facility and, if the Developer elects so to do, lease the same for the account of the Developer, holding the City liable for all payments due under this Capital Lease up to the date of such termination; and

(d) take whatever legal proceedings may appear necessary or desirable to collect the payments under this Capital Lease then due, whether by declaration or otherwise, or to enforce any obligation or covenant or agreement of the City under this Capital Lease or by law.

SECTION 7.3 No Remedy Exclusive

No remedy herein conferred upon or reserved to the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Capital Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

SECTION 7.4 Agreement to Pay Attorneys' Fees and Expenses

If the City should default under any of the provisions of this Capital Lease and the Developer should employ attorneys or incur other expenses for the collection of payments due under this Capital Lease or the enforcement of performance or observance of any agreement or covenant on the part of the City herein contained, the City will on demand therefor pay to the Developer the reasonable fee of such attorneys and such other expenses so incurred.

SECTION 7.5 No Additional Waiver Implied by One Waiver

In the event any agreement contained in this Capital Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7.6 Remedies Subject to Applicable Law

All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Capital Lease invalid or unenforceable.

SECTION 7.7 Events of Default of the Developer The Developer's failure to perform or observe any of its obligations under this Capital Lease, including the payment of Net Parking Revenues to the City, after a period of thirty (30) days after it receives written notice from the City setting forth in reasonable detail the nature and extent of the failure and identifying the applicable Lease provision(s) shall constitute a Developer Lease Default under this Capital Lease; provided, however, if such default cannot be cured within thirty (30) days (other than payment of Net Parking Revenues which shall be due within such thirty (30) days), such cure period shall be extended for a reasonable period of time to allow a cure so long as the Developer has begun to cure within such thirty (30) days and diligently pursues a cure to completion. Upon the occurrence of any such default by the Developer, the City may (a) in the event of a failure to pay Net Parking Revenues, offset such amount (based on the amount of Net Parking Revenues paid in the previous [quarter]) against its obligation to make Basic Lease Payments, or (b) in the event of any other Developer

Lease Default, sue for injunctive relief or to recover damages for any loss resulting from such default or pursue any other remedies available to it under applicable law, except for suspending, reducing or discontinuing any Basic Lease Payment or terminating this Capital Lease.

ARTICLE 8

Options

SECTION 8.1 Option to Purchase Parking Facility

If no Lease Default exists, the City shall have the option to purchase the Parking Facility for a purchase price of \$1.00 after the expiration of the Capital Lease Term. Such option shall be deemed automatically exercised upon the expiration of the Capital Lease Term unless the City notifies the Developer in writing prior to such expiration that it does not intend to exercise such option. The closing for such purchase shall take place on (a) a Business Day designated by the Developer that is not less than seven (7) days nor more than twenty-one (21) days after the expiration of the Capital Lease Term, or (b) such other date as shall be mutually acceptable to the Developer and the City. On or before the closing of such purchase, the Developer shall deliver to the City a bill of sale and/or such other conveyance documents as may be necessary to transfer and convey to the City the Parking Facility, free and clear of all liens, charges and encumbrances.

SECTION 8.2 Conveyances on Exercise of Option to Purchase

Upon the exercise of any option to purchase granted herein, the Developer will transfer the Parking Facility to the City, and the City will lease back the Exclusive Spaces to the Developer pursuant to a long-term, "triple net" lease in form and content acceptable to the parties, the term of which shall be at least co-terminus with the Ground Lease Term. The Developer will deliver to the City documents conveying to the City the Parking Facility, subject to the following: (a) all easements or other rights, if any, required to be reserved by the Developer under the terms and provisions of the option being exercised by the City; (b) those liens and encumbrances, if any, to which title to said property was subject when conveyed or leased (as applicable) to the Developer; (c) those liens and encumbrances created by the City or to the creation of which the City consented; and (d) those liens and encumbrances resulting from the failure of the City to perform or observe any of the agreements or covenants on its part contained in this Capital Lease.

ARTICLE 9

Miscellaneous

SECTION 9.1 Developer's Liabilities Limited

Subject to the terms of this Capital Lease and the Project Agreement, no recourse under or upon any covenant or agreement of this Capital Lease or of any contract or other agreement entered into pursuant to this Capital Lease shall be had against any past, present or future incorporator, officer or member of the Developer, or of any successor entity, either directly or through the Developer, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Capital Lease is solely a corporate obligation of Hunt Services, Inc., and that no personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, officer or member of the Developer or any successor entity, or any of them, under or by reason of the covenants or agreements contained in this Capital Lease.

SECTION 9.2 Notices

All notices or other communications required to be given under this Capital Lease shall be given in writing and shall be deemed to have been duly given on the date delivered, if delivered personally; or the next Business Day, if delivered to a nationally recognized overnight courier service, addressed as follows:

If to the City:

City of Rocky Mount, North Carolina
P.O. Box 1180
Rocky Mount, NC 27804
Attention: City Manager

With copies to:

Jep Rose, City Attorney
Poyner & Spruill
130 S. Franklin St.
Rocky Mount, NC 27804

If to the Developer:

Hunt Services, Inc.
1031 Greystone Square
Jackson, TN 38305
Attention: David B. Hunt, President

With a copy to:

C. Randall Minor, Esq.
Maynard Cooper & Gale, P.C.
1901 Sixth Avenue N. Suite 2400
Birmingham, AL 35203

The City and the Developer may specify a different address for the receipt of such documents by giving notice of the change in address to the other parties named in this Section.

SECTION 9.3 Successors and Assigns

All covenants and agreements in this Capital Lease by the Developer or the City shall bind their respective successors and assigns as permitted under the terms of this Capital Lease, whether so expressed or not.

SECTION 9.4 Benefits of Capital Lease

Nothing in this Capital Lease, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Capital Lease.

SECTION 9.5 Estoppel Certificates

Within ten (10) days following written request by the Developer or the City, the other party shall execute, acknowledge and deliver to the requesting party a certificate indicating any or all of the following: (a) the Commencement Date and the date on which it is then scheduled to expire; (b) that this Capital Lease is unmodified and in full force and effect (or, if there have been modifications, that this Capital Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the Final Parking Facility Costs, (d) the then current rent for the Parking Facility; (e) that no default exists that has not been

cured, except as to defaults stated in such certificate; (f) that the responding party has no existing defense or offset to enforcement of this Capital Lease, except as specifically stated in such certificate; and (g) such other matters as may be reasonably requested by the requesting party.

SECTION 9.6 Subordination, Non-disturbance and Attornment

This Capital Lease and all rights of the City hereunder are and shall be subject and subordinate to the lien of any mortgage, deed to secure debt, deed of trust, or other instrument in the nature thereof (a "Mortgage") which may now or hereafter affect the Developer's title to the Premises or the Developer's interest hereunder and to any modifications, renewals, consolidations, extensions, or replacements of any of the foregoing. As a condition precedent to City's obligations under this section, the Developer agrees to cause any lender to the Developer that requires a Mortgage with respect to the Premises to execute and deliver to the City a subordination, non-disturbance and attornment agreement ("SNDA") in a form mutually acceptable to the Developer's lender and the City, which SNDA shall give the City reasonable assurance that its leasehold rights under this Capital Lease shall not be interrupted or disturbed as a result of a foreclosure or deed in lieu of foreclosure with respect to the Mortgage held by the Developer's lender. In return, the City will attorn to and recognize such successor to the Developer resulting from such foreclosure or deed in lieu of foreclosure as the City's landlord under this Capital Lease. Upon such non-disturbance and attornment, this Capital Lease shall continue in full force and effect as a direct Lease between such successor landlord and the City, subject to all the terms, covenants, and conditions of this Capital Lease, and the successor landlord shall not disturb the City's right of possession of the Premises so long as no Lease Default exists under this Capital Lease.

[remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the City and the Developer have caused this Capital Lease Agreement to be duly executed as of the Effective Date.

CITY OF ROCKY MOUNT, NORTH CAROLINA

By: _____
Print Name: _____
Its: _____

STATE OF NORTH CAROLINA

COUNTY OF EDGECOMBE

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David W. Combs, as Mayor of the City of Rocky Mount, North Carolina.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

HUNT SERVICES, INC.

By: _____
Print Name: _____
Its: _____

STATE OF

COUNTY OF

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing instrument: David B. Hunt, as President of Hunt Services, Inc., a Tennessee corporation.

Dated: September __, 2019

Notary Public
Printed Name: _____
My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A

Description of Parking Facility

The Parking Facility subject to this Capital Lease include the following components:

1. A 5-level parking deck located on the west side of Atlantic Avenue between Ivy and Goldleaf Streets in downtown Rocky Mount, North Carolina;
2. Approximately 700 parking spaces for automobiles, including the requisite number of designated handicapped accessible spaces as mandated by local building codes and the Americans with Disability Act;
3. Total gross floor area of approximately 235,600;
4. At least two (2) entrances/exits to the Parking Facility, one at Atlantic Avenue to the east and the other at Ivey Street to the south;
5. At least two (2) elevators and two (2) stair towers; and
6. Necessary parking infrastructure (including entrance gates, gate arms, ticket dispensers and parking fee collection equipment and/or attendant booths) to charge for the use of spaces within the Parking Facility.

EXHIBIT B

Permitted Encumbrances

[To be added.]