

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WAKE

THIS LEASE AGREEMENT is made and entered into as of this 5th day of August 2020, by and between THE TOWN OF APEX (hereinafter "**Landlord**") and APEX CHAMBER OF COMMERCE (hereinafter "**Tenant**").

WITNESSETH:

WHEREAS, Landlord is the owner of that certain Building located at 220 North Salem Street and Center Street, known as the Apex Union Depot (the "**Building**") and is the lessee of that certain real estate upon which the Building is situated being the real estate described in Exhibit A attached hereto (the "**Land**"). Together, the Building and Land shall hereinafter be called the "**Property**." The areas of the Building that the Tenant is entitled to use shall hereinafter be called the "**Leased Premises**" and shall include the exclusive use, shared use, and common areas as shown on the attached Exhibit B. The Leased Premises do not include any areas reserved to the Landlord's exclusive use, the railroad, caboose or its location leased to the Apex Historical Society by CSX Transportation, and being a rectangular area 100 feet by 48 feet. The Leased Premises do not include the parking lot in front of the Building, provided that during the term of this lease Landlord will continue to maintain the same as a public parking area.

WHEREAS, Tenant desires to lease the Leased Premises from Landlord;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, including, without limitation, the covenant to pay rent and other good and valuable consideration, Landlord and Tenant hereby agree as follows:

1. **Defined Terms.** Capitalized terms used in the recitals shall have the meanings set forth therein.
2. **Leased Premises.** Landlord leases to Tenant and Tenant leases from Landlord the Leased Premises for the Tenants use as described herein.
3. **Term; Termination for Convenience.** The initial term of this lease shall be for a period that shall commence on August 5, 2020, and continue until August 4, 2025, the expiration date. Either Landlord or Tenant may terminate this lease at the expiration of the initial term by giving written notice to the other at least one-year prior to the expiration date. The Tenant shall have the option to renew this lease under the same terms for an additional five (5) years by providing written notice at least six (6) months prior to the expiration date. In the event that neither party acts to terminate this lease as of the end of the initial term, then this lease shall continue on a year-to-year basis until terminated by either party giving a one-year written notice prior to the last day of the then current year term. Either party may terminate the lease at any time by giving the other party at least a one-year notice.

4. **Responsibilities.** Responsibilities of the Landlord and the Tenant are as follows:

a. Tenant's Responsibilities.

- i. Tenant shall pay to Landlord as rent the sum of One Dollar and 00/100 (\$1.00) per year, payable in advance on the date of commencement of this lease and thereafter on or before the first day of each year during the term of this lease. All rent payable by Tenant shall be without previous demand, set off, or deduction. All money rent shall be paid to Landlord at the address to which notices to Landlord are given as set forth in the paragraph entitled "Notices" hereunder.
- ii. Tenant shall reimburse Landlord for property damage caused by Tenant on the Property.
- iii. Tenant shall provide Landlord with one annual membership in the Chamber of Commerce each year and recognize the Landlord as a Platinum Peak Performer. Tenant shall provide Landlord with tickets to WakeUp Apex Events and Women's Network Events.
- iv. Tenant may sub-lease offices and conference rooms to Apex Chamber of Commerce members with or without consideration and without consent of the Landlord so long as there is no violation of Town ordinances, sale or consumption of alcohol, or conflict with prior scheduled Town meetings or events. Tenant shall not sub-lease to non-members.
- v. Landlord shall designate a space in the reception area of not less than 74x94 where Tenant may place marketing materials of Chamber members or promote Tenant events. This space may be provided as two separate spaces totaling aforementioned area. Upon completion of renovations described in Section 4(b)(ii) of this agreement, Landlord may at its discretion require such materials to be relocated to the renovated area. Tenant may not place marketing materials or displays in the Common Areas or any other part of the Building without the written consent of the Landlord.
- vi. Tenant is responsible for office supplies, kitchen supplies, and consumables located in the Leased Premises used by Tenant or Tenant's guests. Such supplies should be designated clearly as for use by the Tenant.
- vii. Tenant shall not sell alcohol at the Building or Property. Tenant may allow for the consumption of alcohol at events with Alcoholic Beverage Commission approval through Apex Police Department and Wake County.
- viii. Landlord shall designate two (2) parking spaces in the parking lot in front of the Building for use by Tenant employees so long as the parking lot exists.

b. Landlord's Responsibilities.

- i. Landlord shall provide staff support through the Economic Development Program Support Specialist to Tenant for approximately twenty (20) hours per week. Support shall be during normal Tenant business hours to

perform functions as agreed upon in the Program Support Specialist job description. The Executive Director of Tenant and the Director of Economic Development for Landlord will meet monthly, unless an alternate meeting schedule is agreed upon, to discuss the performance of the Program Support Specialist.

- ii. Landlord shall pay the costs of any capital improvement projects unless otherwise agreed to in writing by Landlord and Tenant. Landlord proposes to perform renovations to existing shared storage space for use as Tenant's office as set forth in Exhibit C (the "Improvements"). Landlord will attempt to complete renovations within a year if provided for in the budget and approved by Town Council. Tenant agrees to contribute fifty (50) percent of the costs of the Improvements, up to fifteen thousand dollars (\$15,000). Upon completion of the Improvements, the Tenant shall provide an initial payment toward to the Tenant's contribution equal to 1/3 of the Tenant's total commitment. The Tenant shall provide two subsequent payments annually equal to 1/3 of the Tenant's contribution. If the Landlord terminates this agreement other than for cause, the Tenant will be relieved of any remaining payment obligation. If the Landlord terminates the agreement for cause or the Tenant terminates the agreement for any reason other than for cause, the Tenant is responsible for full payment of any remaining balance of the Tenant's obligation. The Tenant shall pay in full any remaining balance within 60 days of termination of the agreement.
- iii. Upon completion of the Improvements, such space shall be designated as Chamber Exclusive Use, and Exhibit B shall be revised to display the newly renovated space as Chamber Exclusive Use and the former Chamber Exclusive Use space shall be designation Town of Apex Exclusive Area.

5. **Tenant's Acceptance; Maintenance and Repair.** Upon occupancy of the premises, Tenant represents to the Landlord that it has examined and inspected the same, finds the premises to be as represented by the Landlord and satisfactory for Tenant's intended use and Tenant accepts the Leased Premises "as is." Tenant shall not make any alterations or repairs to the Leased Premises without Landlord's prior written consent, which shall not be unreasonably withheld. Landlord agrees to keep the Leased Premises in good order and repair and shall make any repairs to the Leased Premises necessary to keep it in such good order and repair, whether the repair is ordinary or extraordinary, structural or non-structural. Tenant will provide for window cleaning through member trade agreement. Landlord will maintain the grounds and landscaping around the Building.
6. **Use.** Tenant shall use the Leased Premises for office space and meeting facility. Tenant shall not use the Leased Premises in any manner that will constitute waste, nuisance, unreasonable annoyance to owners or occupants of adjacent properties or in any manner in violation of any law, regulation, or ordinance of any public authority.

7. **Utilities and Services.** Landlord shall make all arrangements for and pay for all utilities and services used by Tenant, including, without limitation, gas, electricity, water, television and telephone service, internet network and connection, and for all charges for initiation and maintenance of said services. Copier and printer services shall be maintained by Tenant and Landlord's use of the copier and printer services shall be billed to Landlord monthly until such time that Landlord can assume responsibility for the copier and printer provider contract. Upon transfer of the copier and printer services contract to Landlord, Landlord shall bill Tenant monthly for use of such services by the Tenant.
8. **Destruction.** If during the term of this lease the Leased Premises are totally or partially destroyed from any cause, rendering the Leased Premises totally or substantially inaccessible or unusable, this lease shall terminate at the election of Landlord or Tenant.
9. **Insurance; Waiver of Subrogation.** Landlord shall maintain property damage insurance covering the Building through the N.C. League of Municipalities. Throughout the term of the lease, Tenant at its sole cost and expense shall keep for the mutual benefit of Landlord and Tenant (with appropriate cross-liability endorsements so showing) public liability and contents property damage insurance with combined single limited coverage of at least \$1.0 million, which policies insure against all liability of Tenant, Tenant's authorized representatives, and anyone for whom Tenant is responsible arising out of or in connection with Tenant's use of the Leased Premises. All such policies shall be non-accessible and shall contain language, to the extent obtainable, without payment of a premium over that chargeable without such language, that (a) any loss shall be payable notwithstanding any act or negligence of Landlord or Tenant that might otherwise result in forfeiture of the insurance, (b) that the policies are primary and non-contributing with any insurance that Landlord may carry, and (c) that they cannot be cancelled or changed except after 10 days' notice to Landlord. Anything in this lease to the contrary notwithstanding, to the extent covered by insurance, Landlord releases and waives unto Tenant, its successors and assigns, and Tenant releases and waives unto its Landlord, its successors and assigns, all rights to claim damages for any injury, loss, cost, or damage to persons or to the Leased Premises which is occasioned by fire, explosion, accident, occurrence or condition in, on or about the Leased Premises or any other casualty, if, and only if, the amount of which injury, loss, cost or damage has been paid either to Landlord, Tenant, or other damaged person, firm, or corporation, under the terms of any existing, prior, extended coverage, public liability, or other policy of insurance, to the extent such releases or waivers are permitted under applicable law. All policies of insurance carried or maintained pursuant to this lease shall contain or be endorsed to contain a provision whereby the insurer waives all rights of subrogation against either Tenant or Landlord provided that such a provision shall be obtainable. If insurance policies with such waiver of subrogation provisions shall not be obtainable or shall be obtainable only at a premium over that chargeable without such waiver, the party seeking such policy shall pay such additional premium. If any provision relating to a waiver of subrogation contained herein shall contravene any present or future law with respect to exculpatory agreements, the liability of the party affected shall be deemed not released but shall be secondary to the other's insurer.

10. **Condemnation.** If, during the term of this lease there is any taking of all or any part of the Property rendering the Leased Premises totally or substantially inaccessible or unusable, this lease shall terminate at the election of Landlord or Tenant.
11. **Indemnity.** Tenant shall hold Landlord harmless from all liability arising out of any damage or injury to any person or property occurring in, on, or about the Leased Premises, except that Landlord shall be liable to Tenant for damage resulting from the acts or omissions of Landlord or its authorized representatives. With respect to conditions or violations existing prior to the commencement of this lease, Landlord shall hold Tenant harmless in the event that Tenant incurs environmental liability related to the Leased Premises under an environmental law, rule, or regulation.
12. **Assignment and Subletting.** Tenant may not assign or encumber this lease and may not sublet any part or all of the Leased Premises without the prior written consent of Landlord, which shall be at Landlord's sole discretion, except to Chamber of Commerce members as provided in Section 4(a)(iv).
13. **Landlord's Remedies.** Landlord shall have the following remedies if Tenant commits a material default: (a) Landlord shall have the right to terminate this lease and Tenant's rights to possession of the Leased Premises and to reenter the Leased Premises upon giving 30 days' notice of default and such default is not remedied within 30 days of such notice, and (b) upon termination, Landlord shall have the right to pursue its remedies at law or in equity to recover of Tenant all amounts of rent then due or thereafter accruing and such other damages as are caused by Tenant's default.
14. **Quiet Enjoyment.** Provided Tenant performs all his covenants, agreements and obligations hereunder, Landlord will warrant and defend Tenant in the peaceful and quiet enjoyment of the Leased Premises, but only against the lawful claims of all persons claiming by, through, or under Landlord.
15. **Right of Entry.** Landlord and his authorized representatives shall have the right to enter the exclusive use areas of the Leased Premises at all reasonable times and with reasonable notice to inspect the Leased Premises.
16. **Property of Tenant.** All property placed on the Leased Premises by, at the direction of or with the consent of the Tenant, his/her agents, licensees or invitees, shall be at the risk of the Tenant or the owner thereof and Landlord shall not be liable for any loss of or damage to said property resulting from any cause whatsoever. Notwithstanding the foregoing, Landlord acknowledges that it is using furniture and other personal property owned by Tenant, and Landlord shall be liable for any loss of or damage to such property while in possession of Landlord.
17. **Surrender of Leased Premises; Holdover.** Tenant will deliver up the Leased Premises at the end of the term or upon termination hereof, in good order and condition, reasonable wear and tear excepted, and Landlord shall deliver to Tenant all Tenant property being used by Landlord in good order and condition, reasonable wear and tear excepted. If, for

any reason whatsoever, Tenant does not vacate the Leased Premises and holds over after the termination of this lease, such holding over shall not be deemed to be a renewal of this lease but shall be deemed to create a tenancy-at-sufferance and by such holding over Tenant shall be deemed to have agreed to be bound by all of the terms and conditions of this lease except those as to the term hereof.

18. **Waiver.** The waiver by a Landlord of any breach of any covenant or agreement herein contained shall not be a waiver of any other default concerning the same or any other covenant or agreement herein contained. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; but shall constitute only a waiver of timely payment for the particular rent payment involved.
19. **Notices.** All notices provided for in this lease agreement shall be in writing and shall be deemed to be given when sent by certified mail, return receipt requested, addressed: a) to Landlord at P.O. Box 250, Apex North Carolina 27502 and b) to Tenant at 220 N. Salem Street Apex, North Carolina 27502. Either party hereto may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.
20. **Railroad.** Landlord leases from CSX Transportation [the "Railroad"] the Land upon which the Building is located under a lease that is terminable upon 30 days written notice by either party. In the event that the Railroad terminates its lease with the Town, then this lease is likewise terminated as of the date of termination of the lease with the Railroad. The enforceability of this lease shall be contingent upon Railroad granting Landlord consent to sublease to Tenant that portion of the Leased Premises which Landlord leases from Railroad.
21. **Applicable Law.** This lease shall be governed by the laws of the State of North Carolina.
22. **Miscellaneous.** Headings of paragraphs are for convenience only and shall not be considered in construing the meanings of the contents of such paragraph. The invalidity of any portion of this lease shall not have any effect on the balance hereof. Should Landlord institute any legal proceedings against Tenant for breach of any provision herein contained, and prevail in such action, Tenant shall in addition be liable for the costs and expenses of Landlord, including his reasonable attorneys' fees. This agreement supersedes and cancels all prior negotiations between the parties, and changes shall be in writing signed by the party affected by such change. This agreement shall be binding upon the respective parties hereto, and upon their heirs, executors, successors and assigns. Landlord reserves the right to make (and change from time to time) reasonable regulations concerning the premises or real estate. Landlord may sell the Leased Premises without affecting the obligations of Tenant hereunder. This lease may not be recorded without Landlord's prior written consent, but either party agrees on request of the other to execute a memorandum hereof for recording purposes. The singular shall include the plural, and the masculine, feminine or neuter includes the other. Unless expressly provided in this lease that consent or approval may be made in a party's sole discretion, any consent or approval of a party required under this lease shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

LANDLORD:

TOWN OF APEX

(SEAL)

by: _____
Jacques K. Gilbert, Mayor

ATTEST:

Donna B. Hosch
Town Clerk

TENANT:

THE APEX CHAMBER OF COMMERCE, INC.

by: _____
President

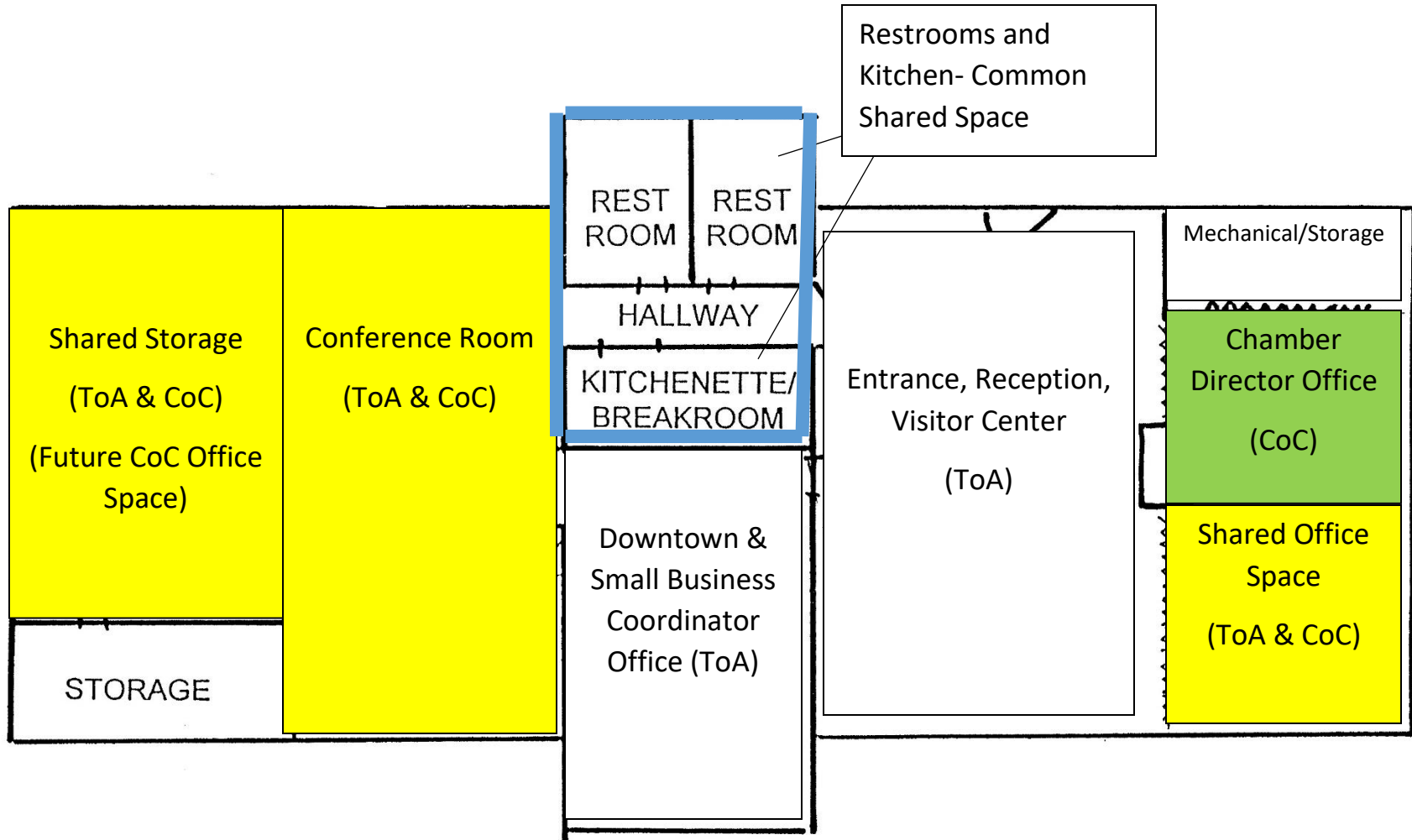
ATTEST:

_____ (Corporate Seal)
Secretary

Exhibit A – Land

Beginning at a point on the southern line of Center Street distant 70 feet westwardly, measured at right angles from the center line of Lessor's main track; running thence eastwardly along said street line 29 feet to a point 41 feet westwardly, measured at right angles from said center line; thence southwardly parallel to the center line of said main track 50 feet to the northern end of said building; thence eastwardly along the northern end of said building 12 feet to the northeastern corner of said building; thence southwardly along the eastern side of said building 30 feet to an offset in said building; thence eastwardly along said offset building line 5 feet to the northeastern corner of said offset; thence southwardly along the eastern side of said offset 16 feet to the southeastern corner of said offset; thence westwardly along the southern side of said offset 5 feet to the eastern side of said building; thence southwardly along the eastern side of said building and prolongation thereof 84 feet; thence westwardly at right angles from the preceding course 41 feet to the western boundary line of Lessor's right of way, which boundary line is parallel with and 70 feet westwardly, measured at right angles from the center line of said main track; thence northwardly along said right of way line 180 feet to the point of beginning; as more clearly shown in red on print of Lessor's Division Engineer's Drawing No. 1209, dated November 15, 1954, last revised May 6, 1969, which print is attached hereto and made a part hereof.

Exhibit B – Leased Premises



Legend: Non-exclusive (Shared) Areas Chamber Exclusive Use Common Space Area

Exhibit C – Improvements

The following represents improvements requested by the Apex Chamber of Commerce (Tenant) for the current shared storage area located in the south section of the Depot.

- All walls to be drywall
- Ceiling to be refurbished existing wood detail (If existing ceiling detail cannot be salvaged, ceiling should be drywall.)
- Construction of one enclosed office space with sliding or pocket door
- Construction of half-bath (sink and toilet) in rear, unfinished storage area
- Removal of carpet to be replaced with a laminate/cement wood (should have appearance of wood flooring)
- Replacement/modernization of lighting and fans
- Removal of ductless (mini-split) heating/air condition system
- Connect area to existing central HVAC system
- All walls to be painted with color chosen by Tenant
- One painted accent wall (optional)