

STAFF REPORT

TO: Mayor and Town Council
FROM: Lawrence P. DiRe, Town Manager
DATE: November 20, 2023
SUBJECT: Item 10A ShoreRivers Lease

Background

The Town and ShoreRivers entered a five-year lease of a portion of the Cerino Center building. Documentation from that time is attached and includes the draft language of the lease that was signed by both parties in November 2018. The lease expires on November 30, 2023 and the tenant has expressed interest in renewing the lease. This matter came before the mayor and council at their November 6, 2023 regular monthly meeting with a staff recommendation to retain all other provisions of the lease and a proposed 8.5% base rent increase over the rent rate of the current lease and no annual increases over the five-year term. Discussion ensued about the proposed rent increase relative to market rate and consumer price index as an indicator of market rate increase. The discussion also recognized the added value of ShoreRivers as a frequent ally of the town in pursuit of grant funding and in the stormwater\ natural plantings improvements they have made to the Cerino Center property. No action was taken on November 6th and staff were directed to bring back a revised recommendation.

Issue

Pending review and discussion should the town renew a five-year lease with ShoreRivers?

Recommendation

The town manager is recommending the current lease be renewed and language in Section 3 Rent be revised to reflect a change in the annual rent of 8.5%. The annual rent shall be \$14,808.08 with a quarterly payment of \$3,702.02 payable to the town on the dates so stated in Section 3. Staff is recommending the remaining provisions remain through an expiration date of November 30, 2028, with one additional five-year extension. In addition to this proposed rate increase, staff is proposing an annual rent rate increase in years four and five of this lease equal to the consumer price index minus housing costs. Further staff recommends both parties entering into discussion of a cost-sharing arrangement for the second floor build out of the Cerino Center and commencing that build out during the first year of the lease extension.

Provided for both discussion and action at this time. Pending further discussion provide direction to staff.

LEASE

THIS LEASE is made this ____ day of _____, 2018, by and between the TOWN OF CHESTERTOWN, a municipal corporation of the State of Maryland ("Landlord") and SHORERIVERS, INC., a body corporate of the State of Maryland having its principal office at 114 S. Washington Street, Suite 301, Easton, MD 21601 ("Tenant").

1. **PREMISES.** Landlord does hereby rent to Tenant and Tenant does hereby rent from Landlord, a one room office space measuring approximately Eight Hundred Fifty-three (853) square feet, known as Suite B (the "Premises"), in the building known as the Chestertown Marina Interpretative Center, at the Chestertown Marina adjacent to Water Street, 211 S. Water Street, Chestertown, MD 21620 (the "Center"), together with the right to use for storage the attic located directly above the Premises, and access to the public bathrooms adjacent to the Premises in the Center.

2. **TERM.** The term of this Lease shall be for five (5) years beginning on November 30, 2018 and terminating on November 29, 2023 (the "Term"). ShoreRivers has the right of first refusal to renew this Lease for up to five years at fair market rental rate after the Term.

3. **RENT.** As rent for the Premises, Tenant shall pay Landlord the sum of Thirteen Thousand Six Hundred Forty-eight Dollars

(\$13,648.00) per year, United States currency, payable in four (4) equal consecutive quarterly installments of Three Thousand Four Hundred Twelve Dollars (\$3,412.00). The initial payment for the period of November 30, 2018 through ~~February 28, 2019~~ December 31, 2018, shall be due and payable on ~~November 30, 2019~~ December 1, 2018 or the date that this Lease is executed by the Tenant, whichever first occurs. Thereafter, payment shall be due on the last ~~first~~ day of ~~February~~ January, the last ~~first~~ day of ~~May~~ April, and the last ~~first~~ day of ~~August~~ July for the quarters beginning ~~March~~ January 1, ~~June~~ April 1, and ~~September~~ October 1, respectively, for the balance of the Term, in advance and without demand.

4. **PAYMENTS; LATE CHARGES.** Tenant covenants to pay promptly the rent as herein provided when due, in the form of either personal check, cashier's check, or money order payable to Landlord, without any deduction; set-off, recoupment, or counter-claim whatsoever. If the rent is not paid by the 5th day of the month, it shall be deemed late, and Tenant will pay as additional rent a sum equal to five percent (5%) of the amount of delinquent rent due. In addition, if a rental payment is made by check and the check is not honored at the bank to which it is presented, the payment shall be considered late, and Tenant shall pay to Landlord a \$50.00 charge to offset administrative costs incurred by Landlord as a result. After the second time that a check of Tenant is dishonored, Tenant must thereafter secure a cashier's check or money order for payments of rent. Late rental payments shall bear interest at the rate of 10% per annum. All rental payments shall be delivered or

mailed to Landlord

at: Town of Chestertown, 118 N. Cross Street, Chestertown, MD 21620.

5. **SECURITY DEPOSIT.** Upon execution of this Lease, Tenant has deposited with Landlord the sum of _____ Dollars (\$ _____) (the "Security Deposit") receipt of which is hereby acknowledged by Landlord. The Security Deposit shall be held as security by Landlord for the full and complete performance by Tenant of its obligations pursuant to this Lease, and shall be applied at the expiration of the Term, on account of any unpaid rental payment or additional charges, if any, required hereunder, or applied against damage due to a breach of this Lease or damage to the Premises by Tenant, its agents, invitees or guests, in excess of ordinary wear and tear. In the event Tenant shall have fully and completely performed Tenant's obligations under this Lease at the termination hereof, the Security Deposit shall be refunded to Tenant. In no event may Tenant deduct the Security Deposit or apply any part thereof towards any rental payment due hereunder.

6. **ACCEPTANCE.** Tenant acknowledges that Tenant has inspected and examined the Premises and the Center and hereby accepts the Premises and the Center in an "as is" condition as of the date hereof, including, but not limited to, the specific conditions or exceptions listed in Attachment A to this Lease signed by each party at the execution of this Lease.

7. **POSSESSION**. Landlord warrants that Tenant may peaceably and quietly enter the Premises at the commencement of the Term.

8. **ALTERATIONS**. Tenant shall not make any alterations, additions or changes in the Premises or the fixtures therein, nor permit these things to be done, without the written consent of Landlord; nor shall Tenant in any manner deface the walls, floors or ceilings of the Premises. Landlord grants permission for Tenant to make alterations, additions and changes to the Premises in accordance with Attachment B to this Lease, signed by each party at the execution of this Lease. Any fixtures or improvements which are permanently installed in or attached to the Premises during the Term shall become part of the Premises and shall remain at the Premises at the end of the Term.

9. **UTILITIES**. Tenant shall pay when due all charges for all utilities delivered to the Premises including, but not limited to, telephone, electricity, cable or satellite television, internet access, teleconferencing facilities, and related business resources. Landlord shall pay all costs for water and sewer to the Center and for custodial services for the public bathrooms adjacent to the Premises in the Center, but not for bathrooms in the Premises. Unless otherwise agreed between the parties hereto, Tenant shall have all utility accounts placed in the name of the Tenant prior to the commencement of the Term. Tenant shall use with care, and for

legitimate and normally intended purposes only, the water/sewer, electric

and other utility fixtures and appliances at the Premises.

10. **USE.** Tenant covenants to continuously use and occupy the Premises for the sole purpose of fostering ecological and environmental benefits for the Eastern Shore of Maryland.

11. **CONDUCT OF TENANCY.** Tenant shall occupy the Premises in such a way that neighbors of the Premises are not disturbed by excessive noises at any hour. Tenant shall not do or permit anything to be done on the Premises which shall affect Landlord's insurance on the Premises or which shall conflict with any applicable law, rule or regulation. Landlord shall have the right to enter the Premises at reasonable times during the day (or any time in the event of an emergency) to inspect the Premises, to make necessary repairs, to show the Premises to prospective tenants or purchasers or for any other reason.

12. **PARKING.** Any parking that may be provided is strictly self-park and is at the vehicle owner's risk. Landlord is not responsible for, nor does Landlord assume any liability for damage caused by fire, theft, casualty or any other cause whatsoever with respect to any vehicle contents.

13. **COMPLIANCE WITH LAWS AND RULES.** Tenant covenants to comply with any applicable laws, regulations, and guidelines of any governmental authority and in particular those with respect to the regulation and conservation of fuels, and to comply with all reasonable rules and regulations adopted by Landlord.

14. **MAINTENANCE AND REPAIRS.** Tenant shall keep the Premises in a safe, clean and sanitary condition at all times during the Term. Except when caused by Tenant's negligence, misuse and/or default hereunder, Landlord shall make all structural repairs to the Premises including repair of HVAC, electric wiring, or plumbing provided by the Landlord; Tenant shall be responsible and pay for each and all other repairs. Without limiting the generality of the fore-going, Tenant shall; (a) keep the Premises heated to a temperature above 55 degrees during cold weather and shall pay the cost of repairing any damage to the Premises due to freezing; (b) have the Premises treated and/or deinfested for rodents and insects as is necessary to keep the Premises in a safe, clean and sanitary condition, (c) place Tenant's garbage in sealed trash bags in the area designated by Landlord on the designated days for pickup; and (d) place recycling materials in the area designated by Landlord on the designated days for pickup.

15. **TENANT'S PERSONAL PROPERTY AND INSURANCE.**

(a) Any personal property left in the Premises after Tenant has vacated or has been evicted is considered abandoned. Landlord may dispose of this property in any manner without notice to Tenant. Tenant must pay Landlord's cost of disposal of Tenant's property.

(b) Landlord is not responsible for any damage to Tenant's personal property. For that reason, **Tenant must obtain insurance to protect Tenant's personal property.**

(c) Tenant shall have comprehensive general liability insurance with an insurance company licensed to do business in Maryland. The

insurance must insure Tenant and Landlord and must have minimum limits of liability for bodily injury and property damage of a combined single limit of at least \$300,000. This insurance is to protect Landlord and Tenant against any claim by Tenant's employees, servants, agents, visitors or licensees. Tenant shall furnish a copy of the policy to Landlord and shall not amend or terminate the policy without 30 days' prior written notice to Landlord. **It is a material breach of this Lease to fail to have the insurance or fail to produce proof when requested.**

(d) If any insurance coverage maintained by Landlord is found to apply to any loss or damage caused by Tenant's insurance, the following will happen:

(i) Landlord's insurance and any obligation of Landlord to pay is considered excess coverage; and

(ii) Tenant's insurance must be fully used up before any claim can be made against Landlord or against Landlord's insurance. Tenant waives any right of subrogation by Tenant or by any insurance company which covers Tenant. Subrogation is the right to be repaid for any payments made by Tenant or Tenant's insurance for injury, loss or damage to personal property or persons.

16. **DAMAGE OR DESTRUCTION.** If the Premises are damaged or destroyed by fire or other casualty so as to render the Premises untenable, this Lease shall terminate and all rental payments and other sums required to be paid by Tenant shall be apportioned as of the date of such casualty. If the Premises shall be damaged by fire or other casualty but are not rendered untenable as a result, such fire or other casualty shall not affect the terms, covenants and conditions of this Lease.

17. **INDEMNIFICATION**. Except when caused by the act or negligence of Landlord, Tenant shall indemnify and hold Landlord harmless for all costs, damages and/or claims (including attorneys' fees and court costs) caused by Tenant's default hereunder and/or resulting from or occurring during Tenant's use and/or occupancy of the Premises.

18. **ASSIGNMENT AND SUBLETTING**. Tenant shall not assign this Lease or sublet the Premises without Landlord's prior written consent.

19. **DEFAULT**. In the event that Tenant fails to pay the rent as required hereunder or fails to comply with any of the other terms, covenants or conditions hereof, Tenant shall be deemed to be in default of this Lease. In the event of such default, Landlord shall have the right to pursue and avail itself of any and all remedies available at law and/or in equity, including but not limited to the right to terminate this Lease, to distrain and to sue for and collect from Tenant all damages caused by such default. The failure of Landlord to insist in any one or more instances upon a strict performance of any covenant, condition or agreement of this Lease, or to exercise any option or right herein contained, shall not be construed as a future waiver or relinquishment of such covenant, condition, agreement, right or option, and that the same shall remain in full force and effect. Furthermore, any exercise or start to exercise by Landlord of any one or more of the rights or remedies herein provided or now or hereafter available at law or in equity, shall not be construed as an election of remedy so as to preclude the simultaneous,

successive, or subsequent exercise by Landlord of any other right or remedy for Tenant's default under this Lease. Tenant agrees to pay Landlord reasonable post-judgment attorney's fees and expenses incurred in attempting to collect on the judgment. The agreement to pay post-judgment fees and expenses shall not merge into the judgment, shall not be extinguished, and shall survive the judgment.

20. **END OF TERM; HOLDING OVER.** At the end of the Term of this Lease, or any renewal thereof, Tenant shall surrender the Premises to Landlord in as good condition as when received, except for any damage caused by ordinary wear and use thereof; and Tenant further agrees to surrender the Premises free and clear of all personal property and debris, and to return to Landlord all keys to the Premises. If Tenant holds possession of the Premises after the termination of this Lease as is provided herein, Tenant shall be deemed a tenant at sufferance at double the monthly rent payable hereunder and otherwise under all the other Tenant's covenants and conditions provided in this Lease.

21. **BINDING EFFECT.** This Lease shall be binding on the parties hereto, and their successors and assigns.

22. **MISCELLANEOUS.** This Lease contains the entire agreement between the parties hereto and shall not be amended or otherwise altered except by a writing signed by all parties hereto. If any provision of this Lease shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. This Lease shall be interpreted and construed under

the laws of the State of Maryland. Whenever the singular is used herein, the same shall include the plural, and words of any gender shall include each other gender. Tenant covenants and promises to pay the rent required hereunder and to comply with all the other terms, covenants and conditions hereof as specified herein.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THIS LEASE AND AFFIXED THEIR SEALS.

WITNESS/ATTEST:

TOWN OF CHESTERTOWN

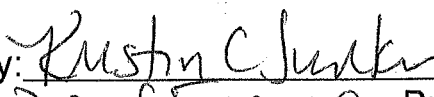
By:  (SEAL)
Christopher Cerino, Mayor

LANDLORD

11/30/18

Date of execution

SHORERIVERS, INC.

By:  (SEAL)
Dir of Finance, President

TENANT

11/30/18

Date of execution

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

R. Stewart Barroll, Esquire
Town Attorney