

Performance Agreement Term Sheet
Element Hotel Development at the Peninsula Town Center, Hampton, VA
March 17, 2017

This Term Sheet sets forth the proposed basic business terms and conditions for the development of the Element Hotel at the Peninsula Town Center in Coliseum Central on the “Macy’s” site between the Economic Development Authority of the City of Hampton, Virginia (the “EDA”) and T Peninsula Hotel VA, LLC (a Texas limited liability company authorized to transact business in Virginia), the development criteria for the Element Hotel project, and criteria for performance based incentives. Additional terms and conditions will be added to the Performance Agreement as may be required by law and by mutual agreement of the EDA, the Developer, and the City of Hampton (the “City”).

General Terms and Conditions:

Purpose: The City is actively seeking businesses and developers to invest in enhanced quality select service or better hotel products, including, but not limited to, architectural design and services that exceed the minimum criteria of any brand developed for that purpose. The EDA awards grants to stimulate significant and substantial economic development in the City by assisting businesses and developers with funding to pay for the enhancements desired to meet the goals of the EDA and the City.

Grantor: Economic Development Authority of the City of Hampton (“EDA”)

Grantee: T Peninsula Hotel VA, LLC (“Developer”) or approved assignee

Property: Portion of the former Macy’s site located at the Peninsula Town Center (LRSN 13002082) (Exhibit A) (the “Property”) to be acquired by T Peninsula Hotel VA, LLC.

Contingencies:

In order to receive any payment under the Performance Agreement, Developer must do the following in addition to all other development and performance criteria set forth herein:

- Developer must provide evidence of authority granted by Starwood/Marriott to own, develop, and operate an “Element” hotel or one of the following comparable types: Upscale, Upper Mid-Scale, and Upper Upscale hotel (the “Hotel”) on the Property for the minimum duration of the proposed Performance Agreement. Approval of any brand other than the Element shall be in the sole discretion of the City and the EDA; and
- Secure sufficient financing and equity to fully fund the development of the Property.

Development Criteria:

- Develop the Hotel with a minimum of 120 rooms and 1,000 square feet of meeting room space
 - The Property shall be developed as the Hotel in substantial conformance with the concept plan prepared by Woolpert and entitled Peninsula Town Center Macy's Redevelopment Site Plan, Sheet 200-A, revise date 1/18/17 (excluding the apartment buildings and common area shown therein), which is attached hereto as Exhibit B and incorporated by reference into this Term Sheet. Any minor changes to the concept plan made necessary by environmental, engineering, architectural, topographic or other development conditions, or site plan and subdivision approval requirements, may be permitted subject to the approval of the Director of Community Development (the "CD Director"), which approval shall not be unreasonably withheld, conditioned or delayed.
 - The Developer shall be responsible and bear all costs for construction of the Hotel, including but not limited to, permit fees, tap fees and any additional required fees associated with development of the Property, and all costs for the improvement of the Hotel's surrounding area which shall include: street and pedestrian improvements on all sides of the Hotel building to facilitate vehicular/pedestrian movements, which shall include: curb and gutter, sidewalks, crosswalks, decorative pavement, landscaping, street lighting, street trees and tree wells, and other pedestrian amenities including trash receptacles, benches, and planters, all in accordance with the Conservation Plan for the Hampton Coliseum Mall Project, Public Works Design and Construction Standards and/or the Coliseum Central Master Plan and Design Guidelines, as applicable. All such improvements shall be shown on the site plan submitted for approval.
 - The Developer shall adhere to all of the conditions in its approved use permit.
 - In order to verify consistency with the Coliseum Central Master Plan, Design Guidelines, the Conservation Plan for the Hampton Coliseum Mall Project, and the Public Works Design and Construction Standards, the Developer shall submit to the Director of Community Development for review the following, all of which must be approved by the CD Director (which approval shall not be unreasonably withheld, conditioned or delayed) before the commencement of any land disturbance or construction activity other than those activities necessary for the demolition of the existing structure:
 - Site plan;
 - Detailed elevations of all sides of the buildings;
 - Detailed Floor Plans along with illustrations/elevations sections of the main lobby area(s);

- Landscape and Streetscape Plans; and
 - Building Material Samples.
- The Hotel building shall be developed in substantial conformance with the building elevations prepared by M+A Architects, entitled “Hotel at Peninsula Town Center,” and dated 3/16/17, which are attached hereto and incorporated by reference into this Agreement. Any minor changes to the building elevations and building materials made necessary by environmental, engineering, architectural, topographic or other development conditions, or site plan and subdivision approval requirements, may be permitted subject to the approval of the Director of Community Development.
 - The final design for the Hotel lobby and other common areas must be mutually agreed upon by the Developer, the CD Director and the EDA’s Representative. The agreement of the CD Director and the EDA Representative shall not be unreasonably withheld.
 - Property development, including all structures, shall be consistent with the concepts and principles outlined in the City of Hampton’s adopted Coliseum Central Master Plan.
 - Hotel building will be a minimum of three (3) floor stories tall and a minimum of 120 rooms and 1,000 square feet of meeting room space.
- Ensure that any proposed intersection of Merchant Lane and Executive Drive shall be a four-way intersection providing vehicular and pedestrian connections in all directions including crosswalks.
 - Dedicate the planned extension of Merchant’s Lane to the Peninsula Town Center Community Development Authority.
 - Submit the required site plan and building plans to the City’s Community Development Department within two (2) months after the execution of the Performance Agreement. In the event a site plan is submitted prior to the execution of the Performance Agreement, the time frame stated shall pertain to any necessary site plan revisions.
 - Submit all required building plans for construction of the Hotel within two (2) months of site plan approval.
 - Obtain building permits and all other permits necessary to commence construction, and commence construction of the Hotel within 30 days after building plan approval.
 - Complete construction of the Hotel as evidenced by the issuance of a Certificate of Occupancy within 15-months of the approval a building permit, subject to Force Majeure.
 - Repair and replace any and all existing infrastructure and streetscape improvements demolished or damaged during construction at Developer’s sole cost and expense.

Performance Criteria & Incentives:

- Economic Development Grants: The EDA, through a Cooperation Agreement to be executed with the City, agrees to pay a maximum of \$2,089,940.00 subject to reduction by Offsets (as later defined herein), in discretionary grants to the Developer as follows:
 - \$1,200,000.00 one-time grant to be paid to the Developer after (i) a copy of the Certificate of Occupancy issued by the City is provided to the EDA, (ii) the Hotel opens for business (“EDA Lump Sum Grant”) and (iii) the Hotel has in existence a minimum of 5 new full time jobs at the Hotel that have a combined average salary of \$35,000.00 plus benefits; and Maximum grant of \$889,940.00 payable over a maximum 10-year period in installments that equal 75% of lodging taxes paid to the City of Hampton during the calendar year from the Hotel not to exceed \$88,940.00 annually (the “EDA Installment Grant”). The first EDA Installment Grant payment shall be made after the first full calendar year of Hotel operations, and each calendar year thereafter, as applicable.
 - The EDA Lump Sum Grant and the EDA Installment Grant are collectively referred to as the “Economic Development Grants”. “Allowable Economic Development Grants” shall mean the Economic Development Grants (\$2,089,940.00) less Offsets.
- Non-EDA Grants, Tax Credits and Offsets: The EDA will assist the Developer to the maximum extent practicable to obtain the following grants and tax credits; however the EDA (1) provides no guarantee or assurance that the Developer will qualify for any or all of said grants and/or tax credits; and (2) shall not be obligated to commit any of its assets in order to facilitate Developer’s receipt of any Non-EDA grant, tax credit, or other incentive:
 - Tourism Zone Gap Funding: The EDA and the City will work collaboratively with the Developer to utilize the Tourism Zone Gap Financing Program for a maximum of 10 years; local and state funding for the Gap Financing Program that exceeds a combined amount of \$585,064.00 will reduce the maximum amount of the Economic Development Grants, dollar for dollar (“Tourism Offset”). In addition, the maximum amount of the Economic Development Grants shall not be increased in the event the said funding is not received or if combined local and state funding for the Gap Financing Program is equal to or less than \$585,064.00.
 - State Enterprise Zone Real Property Grant: The City will assist the Developer in applying for the State Enterprise Zone Real Property Grant. Any amount of this grant that exceeds \$200,000.00 will reduce the maximum amount of the Economic Development Grants, dollar for dollar (“Enterprise Offset”). In addition, the maximum amount of the Economic Development Grants shall not be increased if said grant is not received or in the event that this grant award is equal to or less than \$200,000.00.

- Additional Grants and Tax Credits: Any additional local, state, or federal tax credits or grant funding received by the Developer for the Hotel, but not identified in the Performance Agreement will reduce the maximum amount of the Economic Development Grants, dollar for dollar (“Additional Offsets”).
- The Tourism Offset, Enterprise Offset, and Additional Offsets shall be collectively described as “Offsets.”
- Timing of Payment of Economic Development Grants
 - EDA Lump Sum Grant
 - Within 30 days of satisfaction of the conditions set forth above;
 - Exception: A request is submitted between June 30 and September 30, the timing for payment may exceed 30 days as a result of the need for re-appropriation in a new fiscal year.
 - EDA Installment Grant
 - Will be paid annually on the first business day on or after August 1st of the calendar year following the year for which performance was measured.
- Payment of the Economic Development Grants and Tourism Zone Gap Financing Program (if awarded) is subject to the following additional terms and conditions to be fulfilled by the Developer:
 - Make a minimum capital investment of \$11,304,103.50 (being 90% of the projected capital investment of \$12,560,115.00) (“Capital Investment”) to include:
 - Land Acquisition (Maximum includible in Capital Investment: \$414,000.00)
 - Construction
 - Contractor Management Fee (Maximum Includible \$250,000.00)
 - Existing Shell (Maximum includible in Capital Investment: \$905,445.00)
 - Demolition
 - Site work
 - Signage
 - Architecture
 - Engineering
 - Lighting
 - Graphics
 - Landscaping
 - Interior design
 - Real estate taxes during construction
 - Legal fees (Maximum includible in Capital Investment: \$22,500.00)
 - Insurance
 - Furniture, fixtures, and equipment
 - Operating supplies and equipment
 - Food service, laundry, and information technology
 - Purchasing fee
 - Third party reports

- Financing fees
- Construction interest
- Impact fees
- Developer fee (Maximum includible in Capital Investment: \$155,670.00
Contingency Maximum includible in Capital Investment: \$450,000.00)
- Working Capital (Maximum includible in Capital Investment: \$200,000.00)

Documentation accepted as sufficient evidence of the Capital Investment shall include an itemized summary of the costs associated with each category outlined above certified by an independent Certified Public Accountant or in the alternative, Developer shall submit to the EDA copies of receipts, invoices and all documents related to eligible expenses to directly verify any costs reported for this purpose.

- Maintain 5 new full time jobs at the Hotel that have a combined average annual salary of \$35,000.00 plus benefits for the Hotel throughout the term of the Performance Agreement.
- Must own and operate the Hotel as an Element or the City/EDA approved brand for the duration of the Performance Agreement. In the event that Marriott as the parent company and owner of the Element brand discontinues or eliminates the entire Element brand and portfolio of hotels, or the City/EDA approved brand is discontinued or eliminated, the EDA will notify the Developer of the hotel brands it deems acceptable under which the Developer could continue the Performance Agreement. In the event the Developer is not successful securing an acceptable hotel brand as set forth herein within 6 months of the termination of the hotel operating as an Element or as the City/EDA, the Performance Agreement will terminate and trigger the Repayment of Economic Development Grants in Event of Breach section of the term sheet.
- Submit a project summary report to the EDA no later than 30 days after the Certificate of Occupancy is issued.
- Submit annual revenue reports to the EDA no later than 30 days after the end of the first calendar year, and then each year thereafter, on or before October 1st for the duration of the Performance Agreement; the annual revenue report shall be on a form prescribed by the EDA and shall include only the Hotel's revenues for Rooms. .
- Authorize the EDA to confirm through the Commissioner of the Revenue any revenue figures reported on the annual revenue report
- Repayment of Economic Development Grants in Event of Breach
 - In the event of a breach in any of the terms and conditions of the Performance Agreement, all Economic Development Grant payments payable after that date shall cease for the remainder of the term of the Performance Agreement. In addition, the Developer shall repay a prorated portion of all Economic Development Grants paid by the EDA, with the exception of the Tourism Zone Gap Financing Program (if awarded), as follows:
 - Economic Development Grants from the EDA cease and the Developer repays a portion of any Economic Development Grants received which shall be

dependent on the year of performance in which the breach occurred (90% - 1 year of performance; 80% - 2 years of performance; 70% - 3 years of performance; 60% - 4 years of performance; 50% - 5 years of performance; 40% - 6 years of performance; 30% - 7 years of performance; 20% - 8 years of performance; 10% - 9 years of performance; 0% - 10 years of performance.)

Assignment: The Developer may not assign its interest or any part thereof in the Hotel or the Performance Agreement without the prior written approval of the EDA, which shall not be unreasonably withheld, conditioned or delayed, and upon such approval, the assignee shall assume all of the obligations of the Developer under the Performance Agreement, however no such assignment and shall relieve the Developer of any liability or responsibility hereunder.

Notice and Cure: Neither party shall be deemed in breach or default under the Performance Agreement for its failure to perform or observe any of its obligations until such failure has continued for more than 30 days after the defaulting party's receipt of written notice of such failure or longer period of time as may be reasonably required to cure because of the nature of the breach or default (provided such breaching/defaulting party must have undertaken procedures to cure the breach or default within such 30 day period and thereafter diligently pursues such effort to completion.

Force Majeure: Neither party to the Performance Agreement shall be considered to be in breach of that Performance Agreement to the extent that the performance of their respective obligations is prevented by an event of Force Majeure that arises after the effective date of that agreement. "Force Majeure" shall mean delay in the performance of such obligations due to causes beyond a party's control, including but not restricted to, strikes, lockouts, actions of labor unions, riots, storms, floods, litigation, explosions, acts of God or of the public enemy, acts of government, insurrection, mob violence, civil commotion, sabotage, terrorism, malicious mischief, vandalism, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of, labor, equipment, facilities, materials, or supplies in the open market, defaults of independent contractors or subcontractors (provided that remedies are being diligently pursued against the same), failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of subcontractors due to such causes, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delays, the time or times for the performance of the covenants, provisions, and agreements of the Performance Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such

course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above,(a) the Developer may not rely on its own acts or omissions as grounds for delay in its performance, and (b) the absence of immediately available funds shall not be grounds for delay by the Developer.

Individual Liability: No official, representative, or employee of the EDA or the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the EDA or the City for any amount which may become due to the Developer or successor in interest or on any obligation under the terms of the Performance Agreement. No owner, officer, director, or employee of the Developer shall be personally liable to the EDA or the City in the event of any default or breach by the Developer for any amount which may become due to the EDA or on any obligations under the terms of the Performance Agreement.

[Signatures appear on the next page.]

Seen and accepted as presented, subject to execution of the Performance Agreement to be agreed to by the EDA and Developer:

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON, VIRGINIA

By: _____

It's: Chair/Vice-Chair

T PENINSULA HOTEL VA, LLC

By: _____

Its: Managing Member