

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement"), made as of this ____ day of _____, 20____, by and between **THE OLD POINT NATIONAL BANK OF PHOEBUS, N.A.**, (the "Landowner"), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON, VIRGINIA** a political subdivision of the Commonwealth of Virginia, (the "EDA").

WITNESSETH: That for and in consideration of the terms and conditions set forth herein, the EDA agrees to buy and the Landowner agrees to sell all its rights and interests in the following described land, together with all improvements, to the EDA. The land and improvements subject to this Agreement are described as follows:

LRSN: 12001370, approx. 7,614 sq. ft. OR .1748 AC, located at 1 S. Mallory Street, and all improvements thereon, as more particularly described on Exhibit A attached hereto.

Together with all right, title and interest of the Landowner, if any, in and to any and all easements, rights of way, private roads and other rights of access, ingress and/or egress adjacent to, appurtenant to or in any way benefiting the above described property. The land and improvements may also be referred to collectively as the "Property".

1. **Purchase Price and Landowner Financing.** The total consideration is as follows: NINE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$925,000.00) in full for the Property and all appurtenances and improvements thereon (the "Purchase Price"). The Purchase Price represents the value of all estates or interests in such Property.

Landowner agrees to finance EIGHT HUNDRED THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$832,500.00) of the Purchase Price, pursuant to a promissory note from EDA to Landowner of EIGHT HUNDRED THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$832,500.00), bearing 2% interest per annum, payable over a term of TEN years of even annual payments, secured by a Deed of Trust or other collateral acceptable to the Landowner with the first payment to begin on the 3rd day of December, 2020.

The balance of the Purchase Price shall be paid at settlement in lawful money of the United States of America in cash or readily available funds in the amount of NINETY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$92,500.00).

2. **Right of Entry.** The EDA or its agents may exercise the right to enter upon the Property for such purposes as may be necessary for the performance of any due diligence, surveys, environmental or any other studies without further notice to the Landowner. The EDA is hereby granted 90 days from the date of full execution of this Agreement by all parties (the "**Due Diligence Period**") to inspect the Property and have a Phase I Environmental Assessment performed at the EDA's expense. If the Phase I Environmental Assessment indicates that a Phase II is necessary, a Phase II Environmental Assessment will be performed at the EDA's expense in order to determine the scope of the adverse environmental matters or conditions in, on, under, about, or migrating from or onto the Property. The completion of the Phase II Environmental Assessment will be a condition precedent to the EDA's obligations under

this Agreement. In the event the Phase II Environmental Assessment cannot be completed within the Due Diligence Period, the Landowner will agree to extend the Due Diligence Period.

If the Phase II report indicates that site characterization and remediation is required under state and federal laws then the EDA will have the option to negotiate a reduced purchase price with the Landowner to cover the site characterization and remediation costs and proceed with Settlement, or terminate this Agreement upon notice to the Landowner, in which event neither party will have further rights against or obligations or liability to the other hereunder. To the extent permitted by law and without waiving its defense of sovereign immunity, the EDA shall be responsible for any and all claims of any nature caused by its employees, agents or consultants during the performance of any activities on the Property in furtherance of its due diligence.

A copy of the Phase I and Phase II Environmental Assessments will be made available to the Landowner with rights to their use, together with copies of any supplemental reports.

3. **Tenancies/Indemnity.** The Landowner will compensate the tenant and/or tenants of said Property, if applicable, for any damages said tenant or tenants may suffer and sustain by reason of the conveyance agreed to hereunder and will save harmless the EDA from any and all claims that may be made by said tenant or tenants by reason of such conveyance. **The Landowner warrants that no tenancies, except the City of Hampton, will be on the Property at Settlement.**

4. **Settlement.** Settlement (“**Settlement**”) shall occur at the Office of the City Attorney, 22 Lincoln Street, 8th Floor, Hampton, Virginia 23669 (“**Settlement Agent**”) on May 29 , 2020. Possession of the Property shall be given to the EDA at Settlement. The parties agree that time is of the essence as to the Settlement Date. The Landowner may not remove any fixtures in the interior of the structure or equipment on the Property, and Property must be secured. Possession of the Property shall be given to the EDA at Settlement free and clear of debris and trash.

5. **Prorations.** All rents, interest, taxes, utilities and other appropriate items shall be prorated as of the date of Settlement. Assessments, general or special in nature, pending or confirmed, shall be paid or satisfied in full by the Landowner at Settlement.

6. **Settlement Costs and Expenses.** The EDA shall bear the cost of performing any studies required by the City under due diligence, preparing the deed, obtaining a title report for the Property and all other closing costs associated with Settlement including all recording costs, and its own attorney’s fees.

The Landowner shall pay the recording fees for documents related to the resolution of title defects or issues, including but not limited to fees for obtaining certificates of satisfaction, if any. The Landowner shall pay its own attorney’s and brokerage fees and costs outside of Settlement. The Landowner shall pay grantor’s tax and its prorated portion of real estate taxes and stormwater utility fees.

7. **Conveyance/Title.** The Landowner agrees to convey the Property to the EDA at Settlement by a properly executed and delivered General Warranty Deed with English covenants of title, free of all mortgages, security interests, encumbrances, and liens (for taxes or otherwise), but subject to all

easements, restrictions, rights-of-way and encroachments of record, which do not affect the use of the Property by the EDA or render the title unmarketable. If the Property does not abut a public road, title to the Property must include a recorded easement providing access thereto. If the examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable period of time, the Landowner, at the Landowner's sole cost and expense, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within 30 days after the Landowner received notice of defect, then either party may terminate this Agreement at the expiration of such 30 day period. Upon written notice of termination of this Agreement, said Agreement shall be terminated and neither party shall have any further rights against or obligations or liability to the other hereunder.

The Landowner shall supply, at Settlement, all affidavits and any other documents required by the EDA's title insurance company for the issuance of a policy of insurance, including, but not limited to, an affidavit in a form acceptable to the EDA, and signed by the Landowner that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the Property. If labor or materials have been furnished during the statutory period, the Landowner shall deliver to the EDA, at Settlement, an affidavit signed by the Landowner and the person(s) furnishing the labor or materials that the costs thereof have been paid.

8. Landowner's Representations and Warranties.

a. For purposes of this Paragraph the following definitions shall apply:

(1) "Hazardous Substances" means asbestos and any and all pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials and hazardous substances as referenced or defined in, or pursuant to, any federal, state, local or other applicable environmental law, statute, ordinance, rule, order, regulation or standard in effect on the date hereof including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135, et seq.), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, et seq.), as amended, and the Toxic Substance Control Act (15 U.S.C. 2601, et seq.), as amended.

(2) "Release" means placing, releasing, depositing, spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

(3) "Environmental Condition" means any condition, including, without limitation, the Release of Hazardous Substances, located on or affecting the Property that could require remedial action and/or may result in claims, demands, liabilities, costs and/or expenses to the City.

(4) "Notice" means any written, civil, administrative or criminal summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from the United States Environmental Protection Agency ("USEPA"), the Virginia Department of Environmental Quality, or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional or unintentional act or omission which has resulted or which may result in the Release of Hazardous Substances on or into the Property or otherwise relates to an Environmental Condition.

b. The Landowner covenants, represents and warrants to the City that 1) the Landowner has received no Notice, 2) to the best of its knowledge and belief, the Landowner has not caused or permitted any Environmental Condition on or affecting the Property, and knows of no such Environmental Condition caused or permitted by any other person or entity, and 3) to the best of its knowledge and belief, the Landowner has not caused or permitted, and to the knowledge of the Landowner, no prior or current other owner, tenant, user, operator or other person or entity has caused or permitted, the Property to Release or contain, or to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process, Hazardous Substances or other dangerous or toxic substances or solid wastes. The Landowner further covenants, represents and warrants that there is no action, suit, proceeding, claim, investigation, citizen suit or review pending or threatened against or affecting the title to the Property. Should any notice of such an action, suit, proceeding, claim, investigation or citizen suit be received, it will be immediately forwarded to the Office of the City Attorney of the City of Hampton, Virginia.

c. The Landowner covenants, represents and warrants that, to the best of its knowledge, there are no hazardous wastes, wetlands, or endangered species which would prevent the EDA's free and unrestricted use of the entire Property.

9. **Risk of Loss.** Risk of loss or damage to the Property by fire, wind, storm, or other casualty, or other cause shall remain upon the Landowner until transfer of legal title at Settlement. In the event of substantial loss or damage to the Property before Settlement, the EDA shall have the option of either (i) terminating this Agreement, or (ii) affirming this Agreement, in which event the Landowner shall assign to the EDA all of the Landowner's rights under any policy or policies of insurance applicable to the Property.

10. **Legal and Equitable Enforcement of Agreement.**

a. In the event the consummation of the transactions contemplated herein fail to occur by reason of any default by the Landowner, the EDA shall have the right to seek specific performance of this Agreement.

b. In the event the consummation of the transactions contemplated herein fail to occur by reason of any default of the EDA, except as specified in Paragraphs 2 and 7, the Landowner shall have as its sole remedy, the right to seek specific performance of this Agreement.

11. **Survival.** THE COVENANTS, AGREEMENTS, REPRESENTATIONS, WARRANTIES AND INDEMNITIES OF THE LANDOWNER CONTAINED IN THESE PARAGRAPHS WILL SURVIVE SETTLEMENT AND DELIVERY OF THE DEED.

12. **Entire Agreement/Modification.** There have been no other promises, considerations or representations made which are not set forth in this Agreement. There may be no modification of this Agreement, except in writing, executed by the authorized representatives of the Landowner and the EDA.

13. **Successors and Assigns/Miscellaneous.** The terms and provisions of this Agreement are binding upon and will inure to the benefit of the parties, their respective successors and assigns. To the extent any handwritten or typewritten terms herein conflict with, or are inconsistent with the printed terms hereof, the handwritten or typewritten terms shall control. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary. The captions and headings of the sections contained herein are for the convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement. If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable. This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship of seller and purchaser specifically established hereby. No official, representative or employee of the EDA shall be personally liable to the Landowner or any successor in interest in the event of any default or breach by the EDA for any amount which may become due to the Landowner or successor or on any obligations under the terms of this Agreement.

14. **Governing Law/Venue.** This Agreement shall be deemed to be a Virginia contract and shall be governed by the laws of the Commonwealth of Virginia, and the parties hereto designate the Circuit Court of the City of Hampton, Virginia as the proper venue for all litigation of issues relating to this Agreement.

15. **IRS Requirements.** In accordance with instructions by the Department of the Treasury, Internal Revenue Service, for Form 1099-S, the Landowner is required by Law to provide the City Attorney, 22 Lincoln Street, Hampton, VA 23669 with its correct taxpayer identification number. If the Landowner does not provide the City Attorney's Office with the Landowner's correct taxpayer identification number, the Landowner may be subject to civil or criminal penalties imposed by law. The Landowner will also provide the EDA with other documents necessary for the EDA to comply with State reporting requirements

Under the penalties of perjury, as the Landowner, I/we certify that the number(s) shown on this Agreement is/are my/our correct taxpayer identification number(s).

16. **Brokerage Fees and Commissions.** The EDA and the Landowner each warrant and represent to the other that each will be responsible for the payment of any real estate commission due to any broker or agent with which such party has contracted. Under no circumstances will the EDA pay Landowner's brokerage fees or real estate commissions from the proceeds of the sale at Settlement. The payment of such fees shall be the responsibility of the Landowner outside of Settlement and the Landowner shall indemnify and hold harmless the EDA from any claims or liability arising out of such fees or commissions.

17. **Signatures of parties.** The following information must be provided on the signature lines below:

a. Where the Landowner is an individual or individuals, each person shall sign and print his/her name and include his/her taxpayer identification number.

b. Where the Landowner is a business, the authorized agent of the Landowner shall sign and print his/her name, provide his/her title, the taxpayer identification number of the business and, where necessary, a resolution authorizing the sale of the Property.

c. Where any person holds a Power of Attorney for a Landowner, a copy of the Power of Attorney shall be attached and the person shall sign for the Landowner as his/her Attorney-in-fact.

18. **Ancillary Documents.** The EDA's authorized representative is hereby authorized, on behalf of the EDA, to execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by this Agreement.

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON, VIRGINIA**

By: _____
Chair/Vice Chair

Date: _____

**LANDOWNER:
THE OLD POINT NATIONAL BANK OF PHOEBUS**

By: _____
President

Date: _____

TIN #: _____

Address: _____

[SIGNATURES CONCLUDE ON FOLLOWING PAGE]

Approved as to Legal Sufficiency:

Approved as to Content:

Senior Deputy City Attorney

Representative of the Economic Development
Authority of the City of Hampton, Virginia

Certified as to Availability of Funds:

Department of Finance

Budget Code: _____

DRAFT

Exhibit A – Legal Description

All that certain lot, piece or parcel of land located in the City of Hampton, bounded and described as follows:

BEGINNING at a point marking the intersection of the southerly right-of-way line of South Mallory Street and the westerly right-of-way line of East County Street, and from this point of beginning running thence along the westerly right-of-way line of East County Street, S 27° 31' 33" East, a distance of 98.14 feet to a point; thence S 66° 20' 58" West a distance of 81.14 feet to a point; thence N 23° 30' West a distance of 98.11 feet to a point on the southerly right-of-way line of South Mallory Street; thence along the southerly right-of-way line of South Mallory Street, N 66° 30' East, a distance of 74.25 feet to the point of place of beginning.

SAID property is more particularly shown and described on a certain plat of the same entitled "PLAT OF THE PROPERTY OF MSA, INC., PRACEL OF LAND CONTAINING 7,614 SQ. FT. OR .1748 AC. LOCATED ON MALLORY STREEET IN THE CITY OF HAMPTON, VIRGINIA", dated November 30, 1988, made by T. J. Savage and Associates, Surveyors and land Planners and recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia in Deed Book 937 at Page 374.

Property known as: 1 S. Mallory Street (LRSN 12001370)