

**ECONOMIC DEVELOPMENT INCENTIVE GRANT
PERFORMANCE AGREEMENT**

THIS ECONOMIC DEVELOPMENT INCENTIVE GRANT PERFORMANCE AGREEMENT (the “**Agreement**”) is made May 18, 2017 (the “**Effective Date**”), by and between the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), and T PENINSULA HOTEL VA, LLC, a Texas limited liability company authorized to transact business in the Commonwealth of Virginia (the “**Company**” or “**T Peninsula Hotel**”).

RECITALS:

A. The City has set as a priority the revitalization of the hotel stock in the Coliseum Central area and 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.

B. The EDA was created for the purpose of promoting industry and developing trade by inducing manufacturing, industrial, and commercial enterprises to locate in the City of Hampton (the “**City**”), as well as to promote and encourage the creation and development of new businesses in the City through, *inter alia*, the provision of loans and grants that stimulate significant and substantial economic development in the City by assisting businesses and developers with funding to pay for enhancements desired to meet the goals of the EDA and the City.

C. T Peninsula Hotel plans to own, develop, and operate an “Element” hotel, a brand franchised by Westin Hotel Management, L.P., an ultimate subsidiary of Marriott International, Inc. (“**Marriott**”), or a comparable City & EDA Approved Brand (as that term is defined later herein), to consist of a minimum of 120 rooms with a minimum of 1,000 square feet of meeting space (the “**Hotel**”), construct an extension of Merchant Lane, and improve the Hotel’s surrounding area for vehicular and pedestrian circulation on real property located in the City’s Coliseum Central Area and formerly occupied by Macy’s Department Store, namely a parcel identified as Block 6, Parcel 4 (LRSN 13004539), a parcel designated as Merchant Lane right-of-way (LRSN 13004541), and a portion of a parcel identified as Block 6, Parcel 5 (LRSN 13004540), all located within the Peninsula Town Center (with all improvements referred to herein, including the Hotel, collectively referred to as the “**Project Site**”), as further described on **Exhibit A**, attached hereto and incorporated herein.

D. As authorized by the Industrial Development and Revenue Bond Act, Code of Virginia §15.2-4905, the EDA has agreed to make certain conditional grants to T Peninsula Hotel in the maximum cumulative amount of \$2,089,940.00, subject to reduction by Offsets (as that term is defined later herein), and to participate in the Tourism Zone Gap Funding Program authorized by Code of Virginia §58.1-3851 *et. seq.* and as further set forth herein.

E. The EDA and T Peninsula Hotel desire to set forth their understanding and agreement as to the payment of the Economic Development Grants (as that term is defined later herein), the use of the proceeds of the Economic Development Grants, the obligations of T Peninsula Hotel regarding the Project, and the repayment by T Peninsula Hotel of all or part of the Economic Development Grants under certain circumstances.

F. The stimulation of the additional tax revenue and economic activity to be generated by T Peninsula Hotel's Project Site constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for making the Economic Development Grants.

AGREEMENT:

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the EDA and T Peninsula Hotel agree as follows:

1. **Recitals.** The Recitals to this Agreement are incorporated as a substantive part of this Agreement, and the parties hereby acknowledge the accuracy of such Recitals.

2. **Grant.** The EDA will pay the Economic Development Grants to the Company as set forth in this Agreement and subject to completion of T Peninsula Hotel's obligations and all criteria set forth herein below.

3. **Company Obligations.** The following obligations and criteria must be met by T Peninsula Hotel in order to receive the Economic Development Grants.

a. The Company shall provide evidence of authority granted by Marriott to own, develop, and operate an "Element" brand hotel or a hotel of one of the following comparable types: Upscale, Upper Mid-Scale, and Upper Upscale hotel, subject to approval at the sole discretion of the City and the EDA ("**City & EDA Approved Brand**") on the Project Site for a time period not less than the duration of this Agreement.

b. The Company shall possess sufficient equity and/or secure sufficient financing to fully fund the development of the Project Site.

c. The Company shall acquire from Peninsula Main VA, LLC those parcels identified on Exhibit A as Block 6, Parcel 4 (LRSN 13004539) and the parcel designated as Merchant Lane right-of-way (LRSN 13004541).

d. The Company shall make a minimum capital investment of \$11,304,103.50 in the Project Site (the "**Capital Investment**"), to include the following qualifying categories of costs, with some subject to limitation as further set forth below:

1. Land Acquisition not to exceed \$414,000.00;

2. Hotel Construction Costs;
3. Contractor Management Fee not to exceed \$250,000.00;
4. Existing Shell not to exceed \$905,445.00;
5. Demolition cost related solely to the Project Site;
6. Site work related solely to Project Site, excluding Merchant Lane Extension and sidewalks;
7. Signage;
8. Architecture;
9. Engineering (Civil, Structural, and MEP);
10. Project Site Lighting Modifications;
11. Graphics;
12. Landscaping, Courtyard, Roof Deck related solely to the Project Site, excluding Merchant Lane Extension and sidewalks, and as depicted on the City-approved landscape plan attached hereto as **Exhibit E**;
13. Interior design (I.D. firm costs);
14. Real estate taxes during construction;
15. Legal fees not to exceed \$22,500.00;
16. Insurance;
17. Furniture, fixtures, and equipment;
18. Operating supplies and equipment;
19. Food service, laundry, and information technology;
20. Purchasing fee;
21. Third party reports;
22. Financing fees;
23. Construction interest;
24. Impact fees;
25. Developer fee not to exceed \$155,670.00;
26. Contingency Costs not to exceed \$450,000.00; and
27. Working Capital not to exceed \$200,000.00.

The Company shall provide to the EDA documentation sufficient to verify expenditure of the Capital Investment, including either: (i) an itemized summary of the costs associated with each category outlined above certified by an independent Certified Public Accountant; or (ii) copies of receipts, invoices, and all documents related to eligible expenses sufficient for the EDA to directly verify costs reported for this purpose. In the event Company opts to provide copies of receipts, invoices, and other documents necessary to substantiate the Capital Investment, Company acknowledges and agrees that the EDA shall have 60 days to compile and verify those receipts, invoices, and other documents. The time required for that purpose may be less than 60 days in the event Company submits said documents as the expenditures are incurred.

e. The Company shall develop the Project Site and 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 04/19/17 (excluding the apartment buildings and common area shown therein) (the "**Concept Plan**"), attached hereto as **Exhibit B**

and incorporated by this reference. 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. In addition:

1. The Company shall be responsible and bear all costs for construction on the Project Site, including but not limited to, permit fees, tap fees and any additional required fees associated with development of the Hotel, and all costs for the improvement of the Hotel's surrounding area which shall include: street and pedestrian improvements on all sides of the Project Site 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 to the City for approval.

2. The Company shall adhere to all of the conditions in any applicable use permit necessary for and approved for the Hotel by the City Council for the City ("**Use Permit**").

3. In order to verify consistency with the Use Permit, 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 Company shall submit to the CD Director 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 existing structures on the Project Site:

- i. Site plan;
- ii. Detailed elevations of all sides of the buildings;
- iii. Detailed floor plans along with illustrations/elevations sections of the main lobby area(s);
- iv. Landscape and streetscape plans; and
- v. Building material samples.

4. The Hotel 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, attached hereto as **Exhibit C** and incorporated herein. 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 CD Director.

5. The final design for the Hotel lobby and other common areas must be mutually agreed upon by the Company, the CD Director, and an EDA-designated representative. The agreement of the CD Director and the EDA-designated representative shall not be unreasonably withheld.

6. Project Site development, including all structures, shall be consistent with the concepts and principles outlined in the City's adopted Coliseum Central Master Plan.

7. The Hotel shall be a minimum of three (3) floor stories tall and shall have a minimum of 120 rooms and 1,000 square feet of meeting room space.

8. The Company shall ensure that the intersection of Merchant Lane and Executive Drive shall be a four-way intersection providing vehicular and pedestrian connections in all directions including crosswalks.

9. The Company and, to the extent necessary, its sole member, Peninsula Main VA, LLC, shall dedicate the completed extension of Merchant Lane as set forth in the Concept Plan to the Peninsula Town Center Community Development Authority. For purposes of this provision, "completed" shall mean inspected and approved by the City's Department of Public Works acting as agents of the Peninsula Town Center Community Development Authority.

10. The Company shall submit the required site plan and building plans to the City's Community Development Department within two (2) months after the execution of this Agreement. In the event a site plan is submitted prior to the execution of this Agreement, the time frame stated shall pertain to any necessary site plan revisions.

11. The Company shall submit all required building plans for construction of the Hotel within two (2) months of site plan approval.

12. The Company shall obtain building permits and all other permits necessary to commence construction, and actually commence construction of the Hotel within 30 days after building plan approval.

13. The Company shall complete construction of the Hotel as evidenced by the issuance of a Certificate of Occupancy ("CO"), and all other required construction and improvement of the Project Site within 15 months of the approval a building permit, subject to Force Majeure as set forth in Section 9(j).

14. The Company shall repair and replace any and all existing infrastructure and streetscape improvements demolished or damaged during construction of the Project at Company's sole cost and expense.

f. The Company shall have in existence at the Hotel a minimum of five (5) new full-time jobs that have a combined average salary of \$35,000.00 plus benefits (the "New FT Jobs") upon opening the Hotel and shall maintain the New FT Jobs throughout the term of this Agreement. The New FT Jobs set forth in this Section 3(f) shall be subject to verification by the EDA based on documentation deemed sufficient by the EDA, and may include, but not be limited to, payroll records.

g. The Company shall own and operate the Hotel as an "Element" or other City & EDA Approved Brand throughout the term of this Agreement. In the event that Marriott discontinues or eliminates the Element brand and portfolio of hotels, or the City & EDA approved brand is discontinued or eliminated, the EDA will notify the Company of the hotel brands deemed acceptable under which the Company could continue under this Agreement. In the event the Company is not successful in securing an acceptable hotel brand as set forth herein within six (6) months of the termination of the Hotel operating as an Element or as the City & EDA Approved Brand, the Agreement shall terminate and the Repayment Obligations set forth in Section 6 shall apply.

h. The Company shall provide the following reports to the EDA:

i. A project summary report for the Project Site, to be submitted no later than 30 days after the CO is issued and all other required construction and improvement of the Project Site as set forth above is completed, which shall include, but not be limited to, written certification signed by the Company's manager that it has fully satisfied all provisions of Sections 3(a) – 3(g), and 3(h)(i) of this Agreement as of the date of the submission of the project summary report, including, but not limited to the Company's obligation to provide sufficient documentation as prescribed above to confirm the Company's Capital Investment and New FT Jobs; and

ii. Annual revenue and compliance report no later than 30 days after the end of the first full calendar or part thereof after the submission of the project summary report required by (i) above and every year or part thereof thereafter, on or before February 1st for the duration of this Agreement. The annual report shall be in a form prescribed by the EDA and shall include (i) detailed information on the Company's room revenues; and (ii) written certification signed by the Company's manager of the Company's continued compliance the provisions of Sections 3(f) – 3(g), which are continuing Company obligations. The Company shall allow the EDA to verify with the City's Commissioner of the Revenue (the "Commissioner") actual revenues generated from or by the Hotel and attributed to the City pursuant to Code of Virginia §58.1-3840 *et. seq.* and Hampton City

Code §37-251 *et. seq.* and shall complete any authorization form(s) requested the Commissioner for that purpose.

4. **Economic Development Grants.** The EDA, through a Cooperation Agreement with City attached hereto as **Exhibit D** and incorporated herein agrees to pay the following:

a. The EDA Lump Sum Grant and the EDA Installment Grant (as set forth in this Section 4) shall be, collectively, referred to as the “**Economic Development Grants,**” and shall be subject to reduction by Offsets, as that term is defined in Section 5.

b. The EDA shall pay to T Peninsula Hotel \$1,200,000.00 (the “**EDA Lump Sum Grant**”) upon the occurrence of all of the following:

- i. Issuance of the CO by the City;
- ii. Opening the Hotel for business;
- iii. Compliance with Section 3(h)(i) and verification by the EDA of the information reported therein, including, but not limited to, verification of Company’s first satisfaction of the requirements set forth in Sections 3(a) – 3(g); and
- iv. Having in existence the New FT Jobs.

The EDA Lump Sum Grant shall be paid within 30 days of satisfaction of the conditions set forth above; however, in the event said satisfaction occurs 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.

c. The EDA shall pay to T Peninsula Hotel an additional grant in the maximum cumulative amount of \$889,940.00 to be paid to T Peninsula Hotel for a maximum period of 120 consecutive full calendar months in annual installments not to exceed \$89,940.00 (the “**EDA Installment Grant**”). The EDA Installment Grant shall be applicable to each full calendar month commencing on the date after which all conditions set forth in 3(a) – 3(g) and 3(h)(i) are satisfied. The amount of each annual installment paid shall be equal to seventy-five percent (75%) of the transient lodging taxes collected and remitted by Company to the City in accordance with Hampton City Code §37-251 *et. seq.* during the applicable preceding calendar year or part thereof. For any preceding calendar year in which the applicable full calendar months are less than 12, the maximum annual installment of \$89,940.00 shall be reduced pro-rata, in conformance with the following example:

1. Conditions set forth in 3(a) – 3(g) and 3(h)(i) are first satisfied on February 3, 2018.
2. The first full month considered for the maximum 120 consecutive month period is March, 2018.
3. In calendar 2018, the Company will have operated for ten (10) full, consecutive calendar months.
4. $10/12 = 83\%$

5. The maximum annual installment payable based on lodging taxes remitted in 2018 shall be: \$74,650 (\$89,940.00 * 83%)

Any and all penalty and/or interest paid by Company as a result of late remittance or otherwise shall be retained by the City and shall not be considered in the calculation or payment of the EDA Installment Grant or any annual installment thereof. Each installment shall be paid annually in arrears on the first business day on or after August 1st of the calendar year following the year or portion thereof for which performance was measured, provided that the annual report submitted pursuant to Section 3(h)(ii) has been timely submitted to the EDA in an acceptable form. In the event said annual report is not timely filed or is deemed unacceptable by the EDA, the Company acknowledges that said installment may be paid on a date later than the first business day on or after August 1st ("Delayed Payment Date"), but only upon written notice of all deficiencies to the Company. In no event shall any Delayed Payment Date be more than 30 days after the Company has cured all deficiencies.

In all cases, the cumulative amount of all installment payments hereunder shall not exceed \$899,940.00. In addition, the amount disbursed under this subsection may be subject to repayment as set forth hereinafter.

5. Non-EDA Grants, Tax Credits and Offsets. The EDA will work collaboratively with T Peninsula Hotel to the maximum extent practicable to obtain the following grants and tax credits; however the EDA (1) provides no guarantee or assurance that T Peninsula Hotel 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 as collateral or otherwise to facilitate T Peninsula Hotel's receipt of any Non-EDA grant, tax credit, or other incentive:

a. Tourism zone gap financing as provide by Code of Virginia §58.1-3851 *et. seq.* and Hampton City Code §42-1 *et. seq.* for a maximum of 10 years ("**Gap Financing Program**"). The maximum amount of Economic Development Grants shall be reduced dollar for dollar for any amount of combined state and local funding for the Gap Financing Program that T Peninsula Hotel receives for the Project that exceeds \$585,064.00 ("**Tourism Offset**"). In addition, the maximum amount of the Economic Development Grants shall not be increased in the event the combined local and state funding from the Gap Financing Program received by T Peninsula Hotel is in an amount less than or equal to \$585,064.00. The EDA will request of and make its best efforts to encourage the City to participate in the Gap Financing to the fullest extent allowable by law.

b. Virginia real property investment grant as provided by Code of Virginia §59.1-548 ("**VA Enterprise Grant**"). The maximum amount of Economic Development Grants shall be reduced dollar for dollar for any amount of combined state and local funding for the VA Enterprise Grant that exceeds \$200,000.00 ("**Enterprise Offset**"). In addition, the maximum amount of the Economic Development Grants shall not be increased in the event that T Peninsula Hotel receives any VA Enterprise Grant funding in an amount less than or equal to \$200,000.00 .

c. The maximum amount of Economic Development Grants shall be reduced dollar for dollar for any amount of any other federal, state, or local tax credits or grant funding received by the T Peninsula Hotel for the Project not otherwise identified in this Agreement (“**Additional Offsets**”).

d. The Tourism Offset, Enterprise Offset, and Additional Offsets shall be collectively referred to herein as “**Offsets**.”

6. Repayment Obligation. Subject to the notice and cure provisions of Section 7, the breach of any of the provisions, terms or conditions of this Agreement will result in forfeiture of any then remaining balance of Economic Development Grants payable and the cessation of all payments under the terms of this Agreement. In addition, the Company will be required to repay a percentage of any Economic Development Grants received from the EDA prior to any such failure as follows based on the year in which the failure first occurs: (i) 90% - 1st year of performance; (ii) 80% - 2nd year of performance; (iii) 70% - 3rd year of performance; (iv) 60% - 4th year of performance; (v) 50% - 5th year of performance; (vi) 40% - 6th year of performance; (vii) 30% 7th year of performance; (viii) 20% 8th year of performance; (ix) 10% - 9th year of performance; (x) 0% - 10th year of performance or any year thereafter if this Agreement is extended pursuant to Section 5d. The provisions of this Section shall not apply to any payments made pursuant to the Gap Financing Program.

7. Notice and Cure. Neither party shall be deemed in breach or default under this Agreement for its failure to perform, observe any of its obligations, or remain in compliance 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).

8. Notices. Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, return receipt requested, postage fully pre-paid or by overnight courier. Refusal shall mean return of certified mail or overnight courier package not accepted by the addressee. All such notices shall be addressed as follows:

if to Company, to:

T Peninsula Hotel VA, LLC
Attention: Zaffar S. Tabani
16600 Dallas Parkway, Suite 300
Dallas, Texas 75248

with a copy to:

O’Dowd Law Firm, P.C.
Attn: London S. O’Dowd, Esq.
1400 Preston Road, Suite 400
Plano, Texas 75093

if to the EDA, to:

with a copy to:

Economic Development Authority of
the City of Hampton, Virginia
Attn: Chair
1 Franklin Street, Suite 600
Hampton, Virginia 23669

Office of the City Attorney
Attn: City Attorney
22 Lincoln Street
Hampton, Virginia 23669

9. Miscellaneous.

a. Entire Agreement; Amendments: This Agreement constitutes the entire agreement among the parties hereto as to the subject matter described herein and may not be amended or modified, except in writing of similar formality signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

b. Assignment: T Peninsula Hotel may not assign its interest or any part thereof in this Agreement without the prior written approval of the EDA, which approval shall not be unreasonably withheld, conditioned or delayed. Upon any such approval by the EDA, the assignee shall assume all of the obligations of T Peninsula Hotel under this Agreement, however no such assignment shall relieve T Peninsula Hotel of any liability or responsibility hereunder.

c. Compliance with All Laws: The Company shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of its obligations under this Agreement. The Company represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of its obligations under this Agreement prior to the initiation of work. The Company does not and shall not during the performance of its obligations under this Agreement knowingly employ an unauthorized alien as defined in the Federal Immigration Reform Control Act of 1986.

d. Authority to Transact Business in the Commonwealth and Execute this Agreement: As applicable, the Company, whether organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof when requested by the EDA. The Company shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Agreement. In addition, Company represents that (i) it has the full right, power and authority to enter into this Agreement and to carry out the obligations hereunder; (ii) all requisite action necessary to authorize Company to enter into this Agreement and to carry out Company's obligations hereunder has been obtained; and (iii) this Agreement has been duly authorized, executed and delivered by Company.

e. **Governing Law; Venue:** This Agreement is made and is intended to be performed in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth of Virginia regardless of where accepted or received. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the City of Hampton, or if applicable, the United States District Court for the Eastern District of Virginia, Newport News Division, and such litigation shall be brought only in such courts.

f. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Agreement may be executed by facsimile, electronic communication in portable document format (.pdf) or duplicate originals, and the parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

g. **Severability:** If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

h. **Attorney's Fees:** If any party brings or convenes any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action shall not be entitled to recovery of any costs and expenses of litigation, including, but not limited to reasonable attorney's fees, unless otherwise provided by court order.

i. **Applicability of the Virginia Freedom of Information Act:** Company is advised that the Virginia Freedom of Information Act ("VFOIA"; §2.2-3700 *et. seq.*, Code of Virginia, as amended) shall govern public inspection of all records related to this Agreement. If Company seeks to protect any proprietary data or materials, Company shall (i) provide a statement that invokes protection from the VFOIA, prior to, or upon the submission of the proprietary data or other materials; (ii) provide a statement that identifies the data or other materials to be protected and states the reasons why protection is necessary; and (iii) submit trade secrets and other proprietary information under separate cover in a sealed envelope clearly marked "PROPRIETARY". Information submitted that does not meet the above requirements will be considered public information in accordance with the statutes of the Commonwealth of Virginia. An all-inclusive statement that the entire proposal is proprietary is unacceptable. A statement that the Company's costs or proposal pricing are to be protected is unacceptable. Company will be requested to remove any such statement(s) in order to be eligible for further consideration. The EDA's obligations of confidentiality hereunder shall not apply to any information which (i) is now or hereafter becomes available to the public without breach of the obligations under this Agreement by the EDA; (ii) becomes available to the EDA from a third party having the legal right to disclose such information; or (iii) such disclosure is compelled by a court of competent jurisdiction or otherwise compelled by law.

j. **Force Majeure:** Neither party to this Agreement shall be considered in breach of

this 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. For the purposes of this 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 Company 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 Company.

k. Representatives Not Individually Liable. No official, representative, or employee of the EDA shall be personally liable to the Company 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 Company or successor or on any obligations under the terms of this Agreement. No owner, officer, director, representative, or employee of the Company shall be personally liable to the EDA or the City in the event any default or breach by the Company for any amount which may become due to the EDA or on any obligations under the terms of this Agreement.

[Signatures on the following pages.]

ECONOMIC DEVELOPMENT AUTHORITY OF THE
CITY OF HAMPTON, VIRGINIA

By: [Signature]
Name: Eleanor Weston Brown
Title: Chair/Vice-Chair

COMMONWEALTH OF VIRGINIA
City of Hampton, to-wit:

The foregoing Agreement was acknowledged before me this 18th day of May, 2017, by Eleanor Weston Brown Chair/ Vice-Chair of the Economic Development Authority of the City of Hampton, Virginia, on behalf of the Authority, who is personally known to me.

[Signature]
Notary Public

My commission expires: 3/31/19
Registration number: 4095303

Approved as to Content:
[Signature]
Department of Economic Development

Approved as to Form & Legal Sufficiency:
[Signature]
Patricia A. Melochick
Sr. Deputy City Attorney & Counsel to EDA



[Signatures continue on the following page.]

T PENINSULA HOTEL VA, LLC
A Texas limited liability company

By: _____
Name: Zaffar S. Tabani
Its: Manager, as designated by its sole member,
Peninsula Main VA, LLC, a Texas limited liability
company

COMMONWEALTH/STATE OF Texas
City/County of Dallas, to-wit:

The foregoing Agreement was acknowledged before me this 18th day of May, 2017,
by Zaffar S. Tabani, in his capacity as Manager and on behalf of T Peninsula Hotel VA, LLC, a
Texas limited liability company. He is personally known to me or has produced
_____ as identification.

Julia Paige Reyes
Notary Public

My commission expires: 09-11-2018
Registration Number: N/A

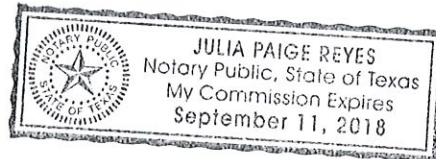
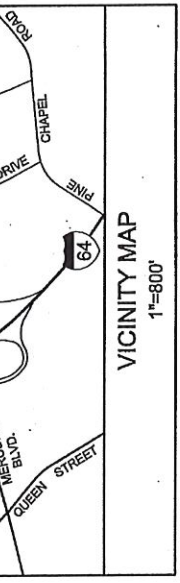


EXHIBIT A
LRSN 13002020; PROJECT SITE PARCEL

Exhibit A: Project Site (outlined in red)

SUBDIVISION PLAT
OF
BLOCK 6, PENINSULA TOWN CENTER
(MISC. P.B. 2 PG. 180)
BEING PROPERTY OF
PENINSULA MAIN VA, LLC
(INSTR. NO. 140011743)
COLISEUM DRIVE & WEST MERCURY BLVD.
HAMPTON, VIRGINIA

DATE: 01-24-2017 SHEET: 1 OF 2 SCALE: 1"=800'
WOOLPERT, INC.
676 INDEPENDENCE PARKWAY, SUITE 100
CHESAPEAKE VA 23320
TEL: 757-549-3549 FAX: 757-549-5340



PARCEL	SQ. FT.	AC.
BLOCK 6, PARCEL 1	44,489	1.021
BLOCK 6, PARCEL 2	11,588	0.268
BLOCK 6, PARCEL 3	11,877	0.273
BLOCK 6, PARCEL 4	43,654	1.003
BLOCK 6, PARCEL 5	180,188	4.138
MERCHANT LANE (40' RW)	13,360	0.314
TOTAL AREA	395,586	7.015

NOTES:

- HORIZONTAL DATUM IS BASED UPON VIRGINIA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83(03). CITY OF HAMPTON COORDINATES ARE NOT TO BE USED FOR THIS PLAT.
- THE PROPERTY DESCRIBED ON THIS PLAT DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA (SFHA) AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY; THE PROPERTY LIES WITHIN ZONE X AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) OF THE FLOOD INSURANCE RATE MAPS IDENTIFIED AS MAP No. 515527-0017H, AS REVISED MAY 16, 2016.
- A CROSS RECIPROCAL UTILITY EASEMENT FOR STORM DRAINAGE AND SANITARY SEWER, WITHIN MERCHANT LANE (40' RW), IS HEREBY DEDICATED TO THE CITY OF HAMPTON, VIRGINIA.
- PROPOSED WATERLINE EASEMENTS, IF ANY, WILL BE DEFINED AND DEDICATED TO NEWPORT WATER NETWORKS.
- THE CHAIN OF TITLES OF THE SITE SHOWN HEREON IS VIRGINIA LAND.
- A PRIVATE COA CROSS RECIPROCAL PEDESTRIAN INGRESS/EGRESS EASEMENT SIX (6) FEET IN WIDTH, EXISTS ADJACENT TO ALL PRIVATE RIGHTS OF WAY AS SHOWN ON MISC. P.B. 2 PG. 180.
- THE OVERALL AREA ENCOMPASSED WITHIN THIS SUBDIVISION IS 395,586 SQ. FT. OR 7.015 AC.
- THE FORMER MACY'S BUILDING WITHIN MERCHANT LANE (40' RW) IS TO BE REMOVED.
- THE PROPERTY SHOWN HEREON IS AFFECTED BY ZONING VARIANCE ACTION V07-111, GRANTED SEPTEMBER 19, 2007; CONDITIONAL USE PERMIT UP 17-00001, GRANTED MARCH 1, 2017; AND ZONING VARIANCE 07-43, GRANTED MAY 7, 2007.
- THIS PLAT PREPARED WITHOUT BENEFIT OF A CURRENT TITLE REPORT AND MAY NOT SHOW ALL EASEMENTS AFFECTING THE PROPERTY SHOWN HEREON.
- THE SUBDIVISION ARE PRIVATE AND SHALL NOT BE MAINTAINED BY VDOT OR THE CITY OF HAMPTON.
- THE LAND BOUNDARY SURVEY SHOWN HEREON IS BASED UPON A CURRENT FIELD SURVEY.

In the Clerk's Office of the Circuit Court of the City of Hampton, Virginia
 A.D. 2017, I, the undersigned, a duly qualified and sworn notary public,
 do hereby certify that the foregoing plat was prepared and recorded as the law directs.
 Test: My Comm. Expires 11-25-18
 Notary Public

THE UNDERSIGNED CERTIFIES THAT THIS PLAT IS IN CONFORMANCE WITH ALL PROVISIONS OF THE CITY OF HAMPTON, VIRGINIA SUBDIVISION CONTROL ACT AND DOES NOT CERTIFY AS TO THE CORRECTNESS OF THE STREETS, BOUNDARIES, OR OTHER LINES AS SHOWN ON THIS PLAT.

SIGNED: *Sheep* DATE: 05-02-2017
 CITY OF HAMPTON SUBDIVISION AGENT
 SIGNED: *Dulane Canty* DATE: 05/02/2017
 DIRECTOR OF PUBLIC WORKS

DRAWN: _____ CHECKED: JGB JOB NO.: 74623.09 FILE NO.: Block 6 Subdivision 006

L. JUDY G. BEALE, VIRGINIA LICENSED LAND SURVEYOR, #002619, DO HEREBY CERTIFY THAT THIS PLAT WAS MADE BY ME, AT THE DIRECTION OF THE OWNERS, AND THAT THIS SUBDIVISION IS ENTIRELY WITHIN THE BOUNDARIES OF LAND COVERED BY THE DEEDS DESCRIBED BELOW, AND THAT STEEL PINS, AS SPECIFIED BY THE SUBDIVISION REGULATIONS OF THE CITY OF HAMPTON, VIRGINIA, ARE ACTUALLY IN PLACE AT POINTS MARKED THIS "•", AND THAT THEIR LOCATIONS ARE CORRECTLY SHOWN.



SOURCE OF TITLE:
 THE PROPERTY SHOWN WITHIN THE LIMITS OF THIS SUBDIVISION WAS CONVEYED TO PENINSULA MAIN VA, LLC FROM HAMPTON OWNERS LLC IN DEED RECORDED AS INSTRUMENT NUMBER 140011743, DATED SEPTEMBER 20, 2014 WHICH IS RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF HAMPTON, VIRGINIA.

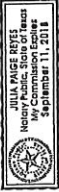
PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND "SUBDIVISION PLAT OF BLOCK 6, PENINSULA TOWN CENTER (MISC. P.B. 2 PG. 180), BEING PROPERTY OF PENINSULA MAIN VA, LLC FROM HAMPTON OWNERS LLC IN DEED RECORDED AS INSTRUMENT NUMBER 140011743, CHESAPEAKE VA 23320, IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

PENINSULA MAIN VA, A TEXAS LIMITED LIABILITY COMPANY
 BY: *Zaffar Sabani* DATE: APRIL 21 2017
 ZAFFAR SABANI, MANAGER

FROST BANK
 BY: *NOVA* DATE: APRIL 25, 2017
 STEWART TRUSTEE SERVICES, LLC

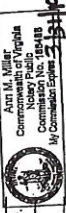
STATE OF TEXAS
 COUNTY OF DALLAS, TO WIT:
 I, **JANA PAUL BOYES**, A NOTARY FOR THE CITY AND STATE OF TEXAS, DO HEREBY CERTIFY THAT ZAFFAR S. SABANI, MANAGER OF PENINSULA MAIN VA, LLC, WHOSE NAME IS SIGNED TO THE FOREGOING WRITING HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY COUNTY AND STATE AFORESAID. HE IS PERSONALLY KNOWN TO ME, OR I HAS PRODUCED IDENTIFICATION.

GIVEN UNDER MY HAND THIS 21ST DAY OF APRIL, 2017.
 NOTARY PUBLIC: *Jana Paul Boyes*
 REGISTRATION NUMBER: N/A DATE: APRIL 21 2017
 MY COMMISSION EXPIRES: 09-11-2018



STATE OF VIRGINIA
 CITY OF HAMPTON, TO WIT:
 I, **Ann M. Miller**, A NOTARY FOR THE CITY AND STATE OF VIRGINIA, DO HEREBY CERTIFY THAT **NOVA** OF STEWART TRUSTEE SERVICES, LLC FOR FROST BANK, TRUSTEE, WHOSE NAME IS SIGNED TO THE FOREGOING WRITING HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY CITY AND STATE AFORESAID. HE/SHE IS PERSONALLY KNOWN TO ME, OR I HAS PRODUCED IDENTIFICATION.

GIVEN UNDER MY HAND THIS 25TH DAY OF April, 2017.
 NOTARY PUBLIC: *Ann Miller*
 REGISTRATION NUMBER: 188488 DATE: April 25, 2017
 MY COMMISSION EXPIRES: 3/31/19



VACATION OF EASEMENT STATEMENT
 THE PENINSULA TOWN CENTER COMMUNITY DEVELOPMENT AUTHORITY CONSENTS TO THE PARTIAL VACATION OF THE EXISTING PEDESTRIAN INGRESS/EGRESS EASEMENT, AS SHOWN IN MISC. P.B. 2 PG. 180 WITHIN THE LIMITS OF THE PROPOSED MERCHANT LANE PRIVATE RIGHT OF WAY.

PENINSULA TOWN CENTER COMMUNITY DEVELOPMENT AUTHORITY
 BY: *Jana Paul Boyes* DATE: APR 21 2017
 STATE OF Virginia, TO WIT:

I, **Christine Canning**, NOTARY FOR THE CITY AND STATE OF VIRGINIA, DO HEREBY CERTIFY THAT **JANA PAUL BOYES** OF PENINSULA TOWN CENTER COMMUNITY DEVELOPMENT AUTHORITY, WHOSE NAME IS SIGNED TO THE FOREGOING WRITING HAS ACKNOWLEDGED THE SAME BEFORE ME IN MY CITY AND STATE AFORESAID. HE IS PERSONALLY KNOWN TO ME, OR I HAS PRODUCED IDENTIFICATION.

GIVEN UNDER MY HAND THIS 2nd DAY OF May, 2017.
 NOTARY PUBLIC: *Christine Canning*
 REGISTRATION NUMBER: 918876 DATE: May 2, 2017
 MY COMMISSION EXPIRES: 8-31-2022

Exhibit A: Project Site (outlined in red)

SUBDIVISION PLAT
OF
BLOCK 6, PENNSULA TOWN CENTER
(MISC. P.B. 2 PG. 180)
BEING PROPERTY OF
PENNSULA MAIN VA, LLC
(INSTR. NO. 140017443)
COLISEUM DRIVE & WEST MERCURY BLVD.
HAMPTON, VIRGINIA

DATE: 01-24-2017 SHEET: 2 OF 2 SCALE: 1"=50'
WOOLPERT, INC.
676 INDEPENDENCE PARKWAY, SUITE 100
CHESAPEAKE VA 23020
TEL: 757-549-3548 FAX: 757-549-5340

CURVE	RADIUS	LENGTH	DELTA	CHORD	CH BEARING
C1	352.10'	38.86'	08°18'37"	35.86'	S 86°54'23"W

LINE	BEARING	DISTANCE
E1	N 74°02'13" E	133.97'
E2	S 15°57'47" E	5.89'
E3	N 74°02'13" E	37.85'
E4	N 15°57'47" W	5.89'
E5	N 74°02'13" E	157.67'
E6	N 74°02'13" E	146.46'
E7	N 15°57'47" W	1.58'
E8	N 74°02'13" E	50.83'
E9	S 15°57'47" E	1.88'
E10	N 74°02'13" E	133.00'

(A) 15' VPOO ESMIT
INSTR. NO. 10001283
INSTR. NO. 10001284
INSTR. NO. 13001481
INSTR. NO. 13001482
(RECORDATION INFORMATION
ON TARGET CORPORATION NOT
PROVIDED)

(B) 45' VERZON ESMIT
INSTR. NO. 100015433

(C) VAR. WIDTH CITY OF NEWPORT NEWS
WATER PIPELINE ESMIT
INSTR. NO. 100016403
INSTR. NO. 110002299

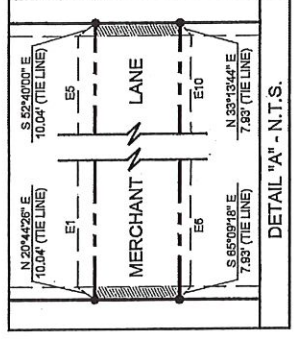
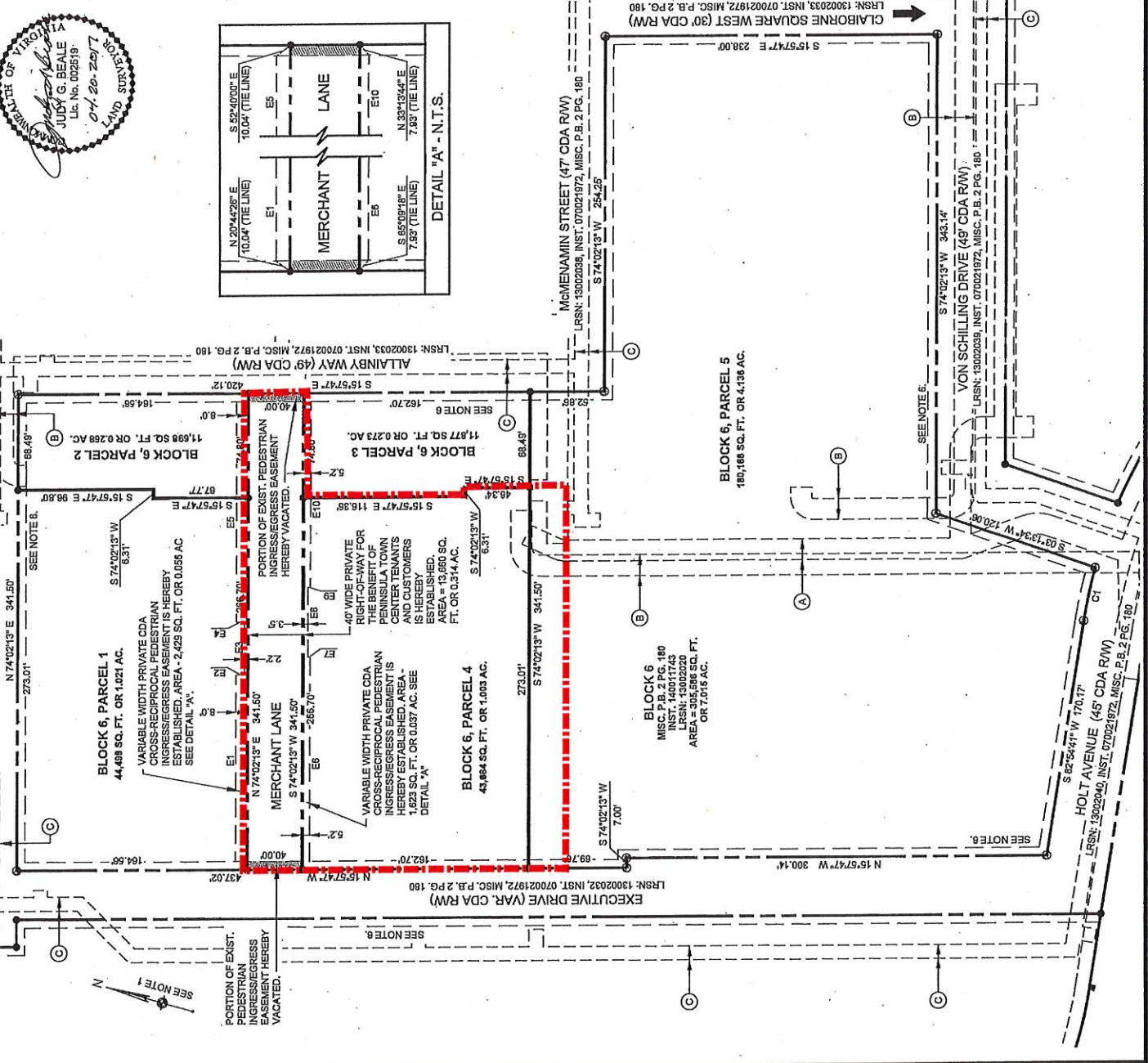
NOTE: "CDA" INDICATES PENNSULA TOWN CENTER COMMUNITY DEVELOPMENT AUTHORITY AND "CDA RW" INDICATES RIGHTS-OF-WAY OWNED BY PENNSULA TOWN CENTER COMMUNITY DEVELOPMENT AUTHORITY.

- LEGEND**
- IRON PIN (FOUND)
 - IRON PIN (SET)
 - RIGHT-OF-WAY MON. (FOUND)
 - ⊙ IRON PIN W/ CAP (FOUND)
 - IRON PIPE (FOUND)
 - ⊙ PK WALL (SET)
 - PK WALL (FOUND)
 - ⊙ DRILL HOLE (FOUND)

- LINETYPE LEGEND**
- PROPOSED RIGHT OF WAY LINE
 - - - EXISTING RIGHT OF WAY LINE
 - PROPOSED PARCEL LINE
 - PROPOSED CDA PARCEL LINE
 - PROPOSED EASEMENT LINE
 - EXISTING EASEMENT LINE



SEE SHEET 1 OF 2 FOR NOTES, CERTIFICATIONS & AREA TABLE
DRAWN: _____ CHECKED: _____ JOB NO.: 74623.09
FILE NO.: _____ Block 6 Subdivision.dwg





DUPLICATE RECEIPT
DEED RECEIPT

DATE: 05/03/17 TIME: 13:31:27 ACCOUNT: 650CLRL70005393 RECEIPT: 17000012960
CASHIER: MJB REG: MQ41 TYPE: OPM PAYMENT: FULL PAYMENT
INSTRUMENT : 170005393 BOOK: PAGE: RECORDED: 05/03/17 AT 13:12
GRANTOR: EASON, JAMES L EX: N LOC: CI
GRANTEE: EASON, JAMES L EX: N PCT: 100%

AND ADDRESS :
RECEIVED OF : MERCURIO, ANTHONY DATE OF DEED: 05/03/17
CHARGE: \$42.00

DESCRIPTION 1: MPB 5 PG 21 SUBDIVISION PLAT OF BLOCK 6 PAGES: 002 OP: 0
2: PENINSULA TOWN CENTER PROPERTY PENINSULA MAIN NAMES: 2
CONSIDERATION: .00 A/VAL: .00 MAP: PIN:

301 DEEDS	27.00	145	VSLF	3.00
106 TECHNOLOGY TRST FND	10.00	407	CONVENIENCE FEE	2.00

TOTAL TENDERED :	42.00
TOTAL AMOUNT PAID:	42.00
CHANGE AMT :	.00

ISSUED BY: MJB

PAYOR'S COPY

**EXHIBIT B
CONCEPT PLAN**

**EXHIBIT C
ELEVATIONS**

NO. 1	PROPOSED EXTERIOR FINISH
NO. 2	PROPOSED INTERIOR FINISH
NO. 3	PROPOSED MASONRY FINISH
NO. 4	PROPOSED PAINT FINISH
NO. 5	PROPOSED TILE FINISH
NO. 6	PROPOSED STAINLESS STEEL FINISH
NO. 7	PROPOSED BRASS FINISH
NO. 8	PROPOSED ALUMINUM FINISH
NO. 9	PROPOSED WOOD FINISH
NO. 10	PROPOSED POLISHED CONCRETE FINISH
NO. 11	PROPOSED BLENDED CONCRETE FINISH
NO. 12	PROPOSED LIGHT POLISHED CONCRETE FINISH
NO. 13	PROPOSED DARK POLISHED CONCRETE FINISH
NO. 14	PROPOSED SMOOTH PLASTER FINISH
NO. 15	PROPOSED TEXTURED PLASTER FINISH
NO. 16	PROPOSED STUCCO FINISH
NO. 17	PROPOSED GYPSONUM FINISH
NO. 18	PROPOSED CEILING FINISH
NO. 19	PROPOSED FLOOR FINISH
NO. 20	PROPOSED ROOF FINISH
NO. 21	PROPOSED WINDOW FINISH
NO. 22	PROPOSED DOOR FINISH
NO. 23	PROPOSED RAILING FINISH
NO. 24	PROPOSED SIGNAGE FINISH
NO. 25	PROPOSED LIGHT FIXTURE FINISH
NO. 26	PROPOSED VENTILATION FINISH
NO. 27	PROPOSED MECHANICAL FINISH
NO. 28	PROPOSED ELECTRICAL FINISH
NO. 29	PROPOSED TELEPHONE FINISH
NO. 30	PROPOSED COMPUTER FINISH
NO. 31	PROPOSED CABLE FINISH
NO. 32	PROPOSED SECURITY FINISH
NO. 33	PROPOSED SAFETY FINISH
NO. 34	PROPOSED ACCESSIBILITY FINISH
NO. 35	PROPOSED SUSTAINABLE FINISH
NO. 36	PROPOSED GREEN FINISH
NO. 37	PROPOSED LEED FINISH
NO. 38	PROPOSED WELLNESS FINISH
NO. 39	PROPOSED BIOPHILIC FINISH
NO. 40	PROPOSED WELLBEING FINISH

775 West Street, Suite 205
 Baltimore, MD 21201
 P 410.764.8272
 F 410.764.8273
 www.maa-architects.com



SITE OF EXISTING MACYS

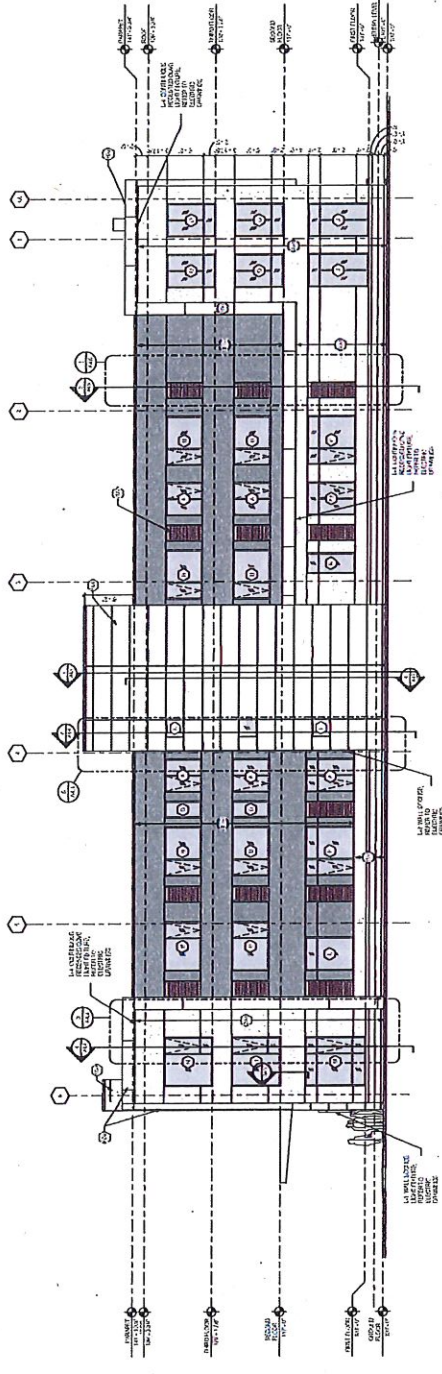
3000 ALLIANCE WAY | HAMPTON, VIRGINIA 23666 |

Hotel at Peninsula Town Center

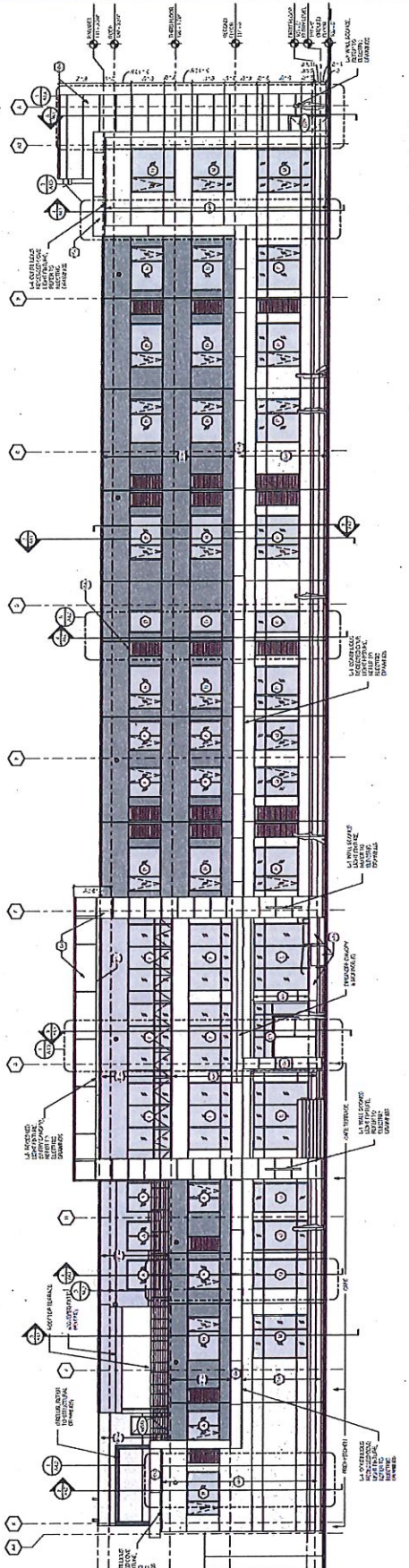
PRELIMINARY
 FOR CONSTRUCTION

DATE:	11/17/2016
PROJECT:	3000 ALLIANCE WAY, HAMPTON, VA
ARCHITECT:	ma architects
DRAWN BY:	AF/AL
CHECKED BY:	JM
DATE:	10/28/2017
PROJECT:	3000 ALLIANCE WAY, HAMPTON, VA
ARCHITECT:	ma architects
DRAWN BY:	AF/AL
CHECKED BY:	JM
DATE:	11/17/2016
PROJECT:	3000 ALLIANCE WAY, HAMPTON, VA
ARCHITECT:	ma architects
DRAWN BY:	AF/AL
CHECKED BY:	JM

A3.2



1. west elevation
 11/17/2016



2. north elevation
 11/17/2016

**EXHIBIT D
COOPERATION AGREEMENT**

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT ("Agreement") is made as of the ^{24th} day of March, 2017, by and between the Economic Development Authority of the City of Hampton, a political subdivision of the Commonwealth of Virginia (the "EDA"), and the City of Hampton, a municipal corporation of the Commonwealth of Virginia (the "City").

WITNESSETH:

WHEREAS, the Council of the City of Hampton (the "Council") has set as a priority the revitalization of the hotel stock in the Coliseum Central area to attract investment, new business and to support the current and future needs of tourism related activities in the Coliseum Central area and throughout the City of Hampton;

WHEREAS, the EDA proposes to accomplish Council's priorities through the issuance of a performance incentive grant to T Peninsula Hotel VA, LLC or its approved Assigns ("Developer") for a hotel project containing a minimum of 120 rooms with a minimum 1,000 square feet of meeting space under the Starwood/Marriott flag, specifically, an Element hotel or a comparable "City/EDA approved Brand" on property located at Peninsula Town Center on a portion of the former Macy's site, LRSN 13002082 (the "Project") equivalent to a maximum of \$2,089,940.00 of which \$889,940.00 shall be payable over a 10 year period based on capital investment by the Developer and other performance criteria;

WHEREAS, the incentive grant is necessary to assist the Developer in offsetting increased costs associated with the design and construction of a new hotel and demolition of the of a portion of the former Macy's building;

WHEREAS, the EDA has determined that the Project cannot be developed without inducement to private developers; and

WHEREAS, negotiations between the EDA and the Developer have culminated in an "Incentive Grant Performance Agreement" ("Grant Agreement"), a copy of which is attached to this Agreement.

NOW, THEREFORE, in consideration of the public benefits to accrue to the City and its citizens from the understanding and carrying out of the Project and the mutual covenants hereinafter set forth, the City and the EDA agree as follows:

1. City to Provide Funds to the EDA. Subject to appropriation by Council and the other limitations contained in Section 5 herein, the City shall take all actions reasonably necessary to raise and to grant to the EDA sufficient funds to perform and administer its obligations under the Grant Agreement. Specifically, the City pledges its moral obligation, subject to the terms set forth in Section 5 below, to deliver to the EDA sufficient funds for the EDA to make timely payment of the incentive grant as set forth in the Grant Agreement.

2. Obligations of the EDA. The EDA shall faithfully perform or cause to be performed its obligations under the Grant Agreement, and shall fully enforce its rights thereunder.

3. Reports to the City. The EDA shall provide to the City, in form and substance and on a schedule acceptable to the City, reports on expenditures and progress with respect to undertaking and carrying out the responsibilities of the EDA hereunder, and under the Grant Agreement.

4. Limited Liability of the EDA. It is the intent of the parties that this Agreement will not impose upon the EDA any responsibility other than that required for the undertaking and completion of the City and EDA obligations under the Grant Agreement. Accordingly, the EDA does not assume by these presence any responsibility or liability whatsoever except as specifically stated herein. Should any liability accrue to the EDA by reason of this Agreement which is not specifically addressed in this Agreement, or the Performance Agreement, the EDA will not be required to expend its funds derived from sources other than its allocable portion of any funds received from the City to discharge such liability.

5. Annual Appropriations and Payments.

(a) The City pledges to the EDA, subject to appropriation by the Council and the other limitations set forth in this Section, to deliver to the EDA sufficient funds as and when required for the EDA to make timely payment of all amounts required to be paid by the EDA under the incentive grant required to be paid by the EDA under the Grant Agreement. The City's pledge and all payments to be made pursuant thereto shall be subject to and are expressly conditioned upon funds being appropriated for such purpose by the City Council and shall not at any time constitute a legal obligation of the City with respect to the Grant Agreement or for the payment of money.

(b) On or before February 1st of each year while the Development Agreement or the Grant Agreement is in effect, as applicable, the City Manager shall determine the amount which the City estimates will be needed to pay all amounts required to be paid by the EDA under the Grant Agreement in the fiscal year commencing on the following July 1 (the "Requested Amount"). The City Manager shall include the Requested Amount for each fiscal year in the City's annual budget to be submitted to Council for approval and will use his best efforts to have the Requested Amount approved and appropriated by Council at least 30 days before the beginning of that fiscal year. In the event that Council does not approve and appropriate the full Requested Amount, the City Manager will seek from time to time such appropriations from Council as may be necessary for complete and timely payment of all amounts required to be paid under the Grant Agreement by the EDA.

(c) Money appropriated by Council for payment thereof shall be paid to the EDA at least 15 days before the same are due, to be applied solely to the payment of amounts required to be paid by the EDA under the Grant Agreement, as applicable, for which such appropriation was made, and shall be used by the EDA for no other purpose. Any funds not required for payment of amounts required by the Grant Agreement shall be promptly returned by the EDA to the City unless the Council directs otherwise.

(d) In the event that the amount actually needed to pay the full amount of the required payments exceeds the Requested Amount, the City Manager shall submit a supplemental request to the City Council for the amount needed to satisfy such a deficit.

(e) All amounts appropriated by the City hereunder shall not be subject to diminishment, set-off or abatement in any event.

(f) The Council shall undertake a non-binding obligation to appropriate to the EDA such amounts as may be requested from time to time pursuant to this Section and elsewhere in this Agreement to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent to make such appropriations in future fiscal years, and recommends that future Councils do likewise.

(g) Nothing in this Agreement is or shall be deemed to be a lending of the credit of the City to the EDA or to any other person, and nothing in this Agreement is or shall be deemed to be a pledge of the faith and credit or the taxing power of the City.

8. Severability of Invalid Provisions. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it. Notwithstanding the foregoing, if the City's moral obligation to provide funding for the Project is held invalid by a court of competent jurisdiction, this Agreement will terminate and the EDA may take whatever steps it deems necessary or appropriate to minimize its actual or perceived liability in connection with the Project and its obligations under the Grant Agreement.

9. Notices. All notices, certificates, requests or other communications under this Agreement must be in writing and will be deemed given when mailed by first class, registered or certified mail, return receipt requested, to the addresses set forth below.

If to the EDA:

Economic Development Authority of the City of Hampton
One Franklin Street, Suite 600
Hampton, Virginia 23669
Attention: Director of Economic Development

If to the City:

City of Hampton, Virginia
22 Lincoln Street
Hampton, Virginia 23669
Attention: City Manager

The parties may by notice given under this section designate such other addresses as they deem appropriate for the receipt of notices under this Agreement.

If by reason of the suspension of or irregularities in regular mail service it is impractical to mail notice of any event when notice is required to be given, then any manner of giving notices which is satisfactory to the intended recipient will be deemed sufficient.

10. General Provisions. This Agreement will be governed by the laws of the Commonwealth of Virginia, and may be amended only by written agreement of the parties. In carrying out this Agreement, the City and the EDA agree not to discriminate against any employee or applicant because of race, color, religion, sex, national origin, age or disability. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, will be an original, and the counterparts taken together will constitute one and the same instrument.

11. Waiver. Any waiver by any party of its rights under this Agreement must be in writing and shall not be deemed a waiver with respect to any matter not specifically covered therein.

12. Successors and Assigns; Third Party Rights. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give. The rights and remedies available to the EDA under this Agreement shall inure to the benefit of the Developer; provided, however, such rights granted to the Developer shall terminate on the date the maximum incentive grant required under the Grant Agreement is paid in full in a timely manner.

THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON

By: 
Chair/ Vice-Chair

CITY OF HAMPTON

By: 
City Manager

Approved as to form and legal sufficiency:

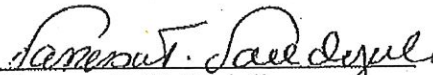
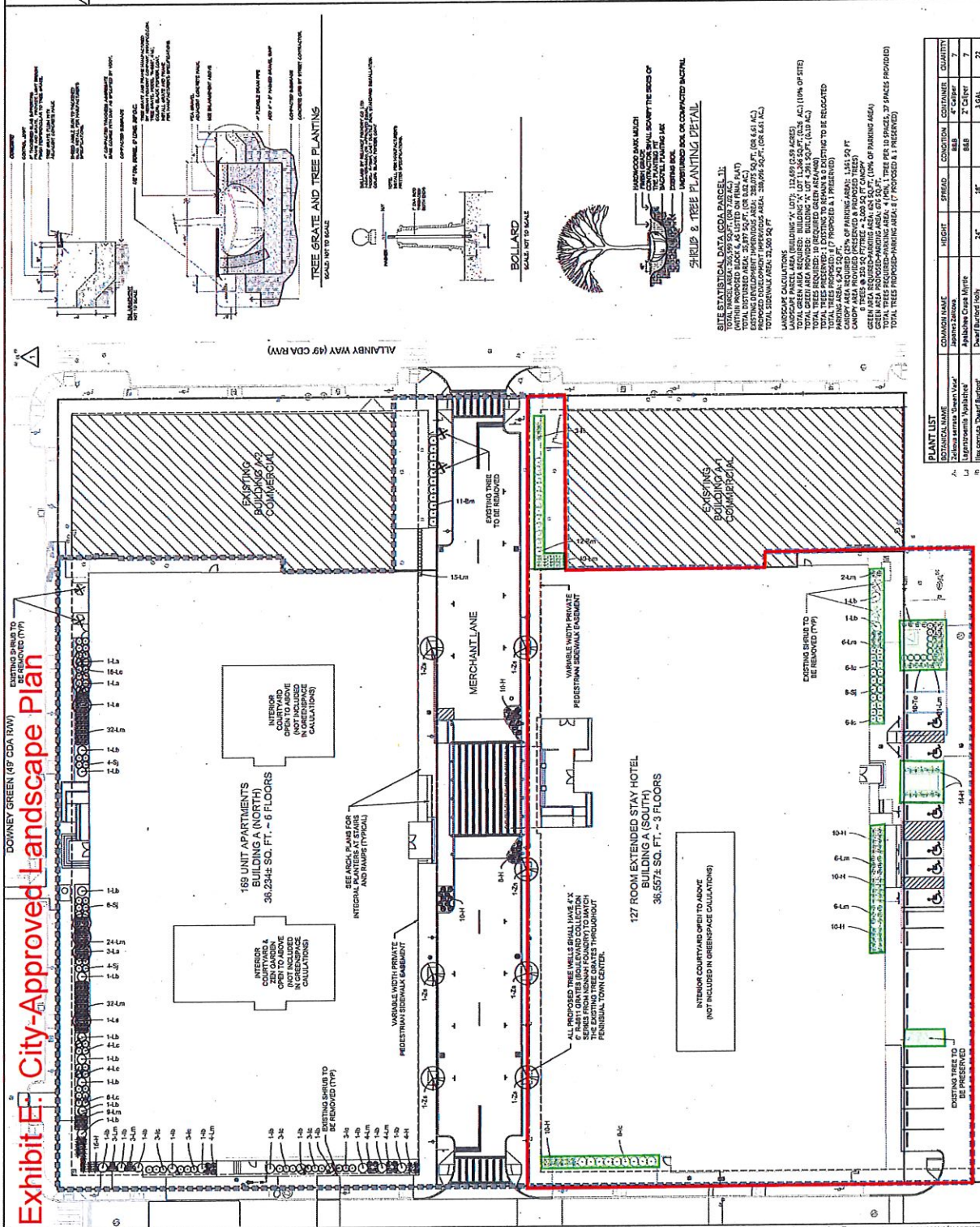

Vanessa T. Valldejuli
City Attorney and Counsel for the EDA

EXHIBIT E
CITY-APPROVED LANDSCAPE PLAN

Exhibit E: City-Approved Landscape Plan



PLANT LIST

PLANT NAME	COMMON NAME	HEIGHT	SPEED	CONDITION	CONTAINER	QUANTITY
1	169 Unit Apartment Building A (North)	38,234 sq. ft. - 6 floors				
2	127 Room Extended Stay Hotel Building A (South)	38,572 sq. ft. - 3 floors				
3	Existing Building 911	Commercial				
4	Existing Building 711	Commercial				

LANDSCAPE PLAN LEGEND:

LANDSCAPE PLAN AREA

LANDSCAPE PLAN NOTES:

THE CONTRACTOR SHALL INSTALL IRIGATION FOR ALL LANDSCAPED AREAS IN ACCORDANCE WITH THE CITY OF HAMPTON REQUIREMENTS.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING AND PRECISE CONTRACTING TO THE CITY OF HAMPTON.

ALL EXISTING PLANT MATERIAL SHOWN ON THIS PLAN IS TO BE PRESERVED UNLESS SPECIFICALLY NOTED OTHERWISE.

ALL AREAS DISCLOSED BY CONSTRUCTION ARE TO BE RESTORED TO ORIGINAL GRADE AND SLOPE.

ALL LANDSCAPED AREAS SHALL BE COVERED WITH A NON-WOVEN VEIL BARRIER AND 2" OF HARDWOOD BARK MULCH.

CITY OF HAMPTON LANDSCAPE PLAN NOTES:

THIS PLAN IS OWNED BY THE CITY OF HAMPTON. THE DIRECTOR OF PUBLIC WORKS HAS REVIEWED AND APPROVED THIS PLAN FOR THE PROJECT AND IS AN EXHIBIT OF THE PROJECT'S SITE PLAN. ALL LANDSCAPE FEATURES EXISTING TO BE RETAINED ARE THE LANDSCAPE IMPROVEMENTS DEVELOPED BY THE CITY OF HAMPTON. ALL LANDSCAPE AND DEVELOPMENT CODE AND ZONING ORDINANCES. AFTER THE PLAN IS APPROVED BY THE CITY OF HAMPTON, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ESTABLISHING AND MAINTAINING THE LANDSCAPE FEATURES SHOWN ON THIS PLAN.

LANDSCAPE MAINTENANCE: ALL NEW LANDSCAPE IMPROVEMENTS SHALL BE SUBJECT TO REGULAR MAINTENANCE, INCLUDING FERTILIZATION, PRUNING, MULCHING, AND WEED CONTROL.

GREEN AREAS: GREEN AREAS SHALL CONSIST OF EARTH-CAPABLE OF SUPPLYING PLANT MATERIAL AND PROVIDING NATURAL STORE MATERIALS, PRODUCTS OR EQUIPMENT. WHERE ORNAMENTAL PLANTS ARE TO BE INSTALLED, THE CONTRACTOR SHALL PROVIDE AN ADEQUATE GROWTH MEDIUM FOR THE SPECIFIED PLANTS. SOIL SHALL BE 100% GROWTH MEDIUM AS SPECIFIED IN THE PLANS AND SPECIFICATIONS. THOSE GREATER SOILS SHALL APPLY:

- THE TEXTURE, pH, OR NUTRIENT BALANCE OF THE AVAILABLE GROWTH MEDIUM SHALL BE SUITABLE FOR THE SPECIFIED PLANTS.
- THE SOIL SHALL BE 100% GROWTH MEDIUM AS SPECIFIED IN THE PLANS AND SPECIFICATIONS. THOSE GREATER SOILS SHALL APPLY:
- NUTRIENTS FOR PLANT GROWTH.
- THE CONTRACTOR SHALL PROVIDE PLANT GROWTH MEDIUM TO THE USE OF SOIL AND CHEMICALS (i.e., FERTILIZER, GROWTH REGULATORS, AND OTHERS) TO PROMOTE PLANT GROWTH.

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OWNERS/CLIENT:

LANDSCAPE MANAGER
PENINSULA TOWN CENTER
4410 E. CLAYBURN RD., HAMPTON, VIRGINIA 23066
PHONE: 757-425-2472
FAX: 757-425-2473
EMAIL: PHANLET@PENINSULACOM

LOCAL CONTACT:

LANDSCAPE MANAGER
PENINSULA TOWN CENTER
4410 E. CLAYBURN RD., SUITE 200
DALLAS, TEXAS 75246
PHONE: 972-678-2000
FAX: 972-678-2000
EMAIL: S@PTMANAGER.COM

LANDSCAPE PLAN LEGEND:

LANDSCAPE PLAN AREA

LANDSCAPE PLAN NOTES:

THE CONTRACTOR SHALL INSTALL IRIGATION FOR ALL LANDSCAPED AREAS IN ACCORDANCE WITH THE CITY OF HAMPTON REQUIREMENTS.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING AND PRECISE CONTRACTING TO THE CITY OF HAMPTON.

ALL EXISTING PLANT MATERIAL SHOWN ON THIS PLAN IS TO BE PRESERVED UNLESS SPECIFICALLY NOTED OTHERWISE.

ALL AREAS DISCLOSED BY CONSTRUCTION ARE TO BE RESTORED TO ORIGINAL GRADE AND SLOPE.

ALL LANDSCAPED AREAS SHALL BE COVERED WITH A NON-WOVEN VEIL BARRIER AND 2" OF HARDWOOD BARK MULCH.

CITY OF HAMPTON LANDSCAPE PLAN NOTES:

THIS PLAN IS OWNED BY THE CITY OF HAMPTON. THE DIRECTOR OF PUBLIC WORKS HAS REVIEWED AND APPROVED THIS PLAN FOR THE PROJECT AND IS AN EXHIBIT OF THE PROJECT'S SITE PLAN. ALL LANDSCAPE FEATURES EXISTING TO BE RETAINED ARE THE LANDSCAPE IMPROVEMENTS DEVELOPED BY THE CITY OF HAMPTON. ALL LANDSCAPE AND DEVELOPMENT CODE AND ZONING ORDINANCES. AFTER THE PLAN IS APPROVED BY THE CITY OF HAMPTON, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ESTABLISHING AND MAINTAINING THE LANDSCAPE FEATURES SHOWN ON THIS PLAN.

LANDSCAPE MAINTENANCE: ALL NEW LANDSCAPE IMPROVEMENTS SHALL BE SUBJECT TO REGULAR MAINTENANCE, INCLUDING FERTILIZATION, PRUNING, MULCHING, AND WEED CONTROL.

GREEN AREAS: GREEN AREAS SHALL CONSIST OF EARTH-CAPABLE OF SUPPLYING PLANT MATERIAL AND PROVIDING NATURAL STORE MATERIALS, PRODUCTS OR EQUIPMENT. WHERE ORNAMENTAL PLANTS ARE TO BE INSTALLED, THE CONTRACTOR SHALL PROVIDE AN ADEQUATE GROWTH MEDIUM FOR THE SPECIFIED PLANTS. SOIL SHALL BE 100% GROWTH MEDIUM AS SPECIFIED IN THE PLANS AND SPECIFICATIONS. THOSE GREATER SOILS SHALL APPLY:

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