

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT is made as of the ____ day of _____, 2016, 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 development of a hotel project containing 109 rooms and a minimum of 2,000 square feet of meeting space under the Hyatt Place flag on property located at Coliseum Drive & Pine Chapel Road (LRSN 7001266) ("Hotel Site") and Pump Station (LRSN 13003968) (the "Project") together with the issuance of a performance grant incentive to Hampton Lodging Partners LLC, a Virginia limited liability company (the "Developer") equivalent to a maximum of \$2,993,300.00, \$593,300 of which 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 pump station structure;

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

WHEREAS, negotiations between the EDA and the Developer have culminated in a "Development Agreement" and an "Incentive Grant Performance Agreement" ("Grant Agreement"), copies of which are attached to this Cooperation 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. Conveyance to the EDA. The City shall convey to the EDA, without consideration, the Pump Station property (LRSN 13003968), owned by it and required for the Project pursuant to the Development Agreement.

2. City to Provide Funds to the EDA. Subject to appropriation by Council and the other limitations contained in Section 7 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 Development Agreement and the Grant Agreement. Specifically, the City pledges its moral obligation, subject to the terms set forth in Section 7 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.

3. Obligations of the EDA. The EDA shall faithfully perform or cause to be performed its obligations under the Development Agreement and the Performance Agreement, and shall fully enforce its rights thereunder, and keep the City periodically informed as to progress of the Project.

4. Provision of Personnel and Material. The EDA and the City collectively and cooperatively shall provide or cause to be provided all personnel, consulting services, equipment and materials reasonably necessary to fulfill their obligations and exercise their rights under the Development Agreement and any related agreements, including, but not limited to, providing engineering surveys, property line maps, structural and building inspections, architectural, engineering and landscape design, plans and construction drawing review, contract review and administration, Project inspections, and all planning, administration and accounting functions and related activities as may be necessary to carry out their respective roles in the development of the Project, in a timely manner. To the extent that the aforesaid obligations cause the EDA to exceed amounts available to it, the City shall advance such amounts to the EDA or reimburse the EDA for any and all such excesses.

5. 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 Development Agreement and the Grant Agreement.

6. 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 Development Agreement and 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, the Development 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.

7. 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 Development Agreement and 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 Development Agreement, 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 Development Agreement or the Performance 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 Development Agreement or 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 Development Agreement or 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 Development Agreement or 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.

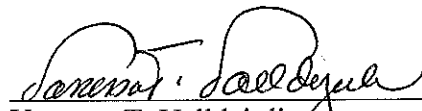
THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON

By: _____
Chair/ Vice-Chair

CITY OF HAMPTON

By: _____
City Manager

Approved as to form and legal sufficiency:



Vanessa T. Vallejuli
City Attorney and Counsel for the EDA

**ECONOMIC DEVELOPMENT INCENTIVE GRANT
PERFORMANCE AGREEMENT**

THIS ECONOMIC DEVELOPMENT INCENTIVE GRANT PERFORMANCE AGREEMENT (the "Agreement") is made September ____, 2016 (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 HAMPTON LODGING PARTNERS LLC, a Virginia limited liability company (the "Company" or "Hampton Lodging").

RECITALS:

A. 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 acquisition and leasing of real property and the provision of loans and grants.

B. Hampton Lodging plans to acquire, redevelop and construct a Hyatt Place Hotel to consist of a minimum of 109 rooms with a minimum of 2,000 square feet of meeting space (the "Project") on those certain parcels of real property located in the City's Coliseum Central Area, namely the EDA-owned parcel located at Coliseum Drive and Pine Chapel Road, LRSN 7001266 (the "Hotel Site") and the City-owned parcel housing a pump station, LRSN 13003968 (the "Pump Station Site"), less certain easements (existing or retained) (the Hotel Site and the Pump Station Site collectively referred to as the "Property") pursuant to that certain Development Agreement dated September ____, 2016 between the EDA, the City, and Hampton Lodging (the "Development Agreement").

C. 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 Hampton Lodging in the maximum cumulative amount of \$2,993,300, subject to reduction by certain offsets.

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

E. The stimulation of the additional tax revenue and economic activity to be generated by Hampton Lodging's Project 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 Hampton Lodging 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 Hampton Lodging's obligations and all criteria set forth herein below.

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

a. The Company shall close on the acquisition of the Property and the Project in accordance with the terms of the Development Agreement.

b. The Company shall make a minimum capital investment of \$11,200,000.00 in the Project (the "Capital Investment"), excluding the acquisition value of the Property, and including the following costs to be incurred in accordance with the Development Agreement:

i. Demolition of structures on the Pump Station Site and legal disposal of resulting debris;

ii. Site Development in accordance with the Development Agreement;

iii. Building construction;

iv. Design and engineering;

v. Permits, licenses, and fees;

vi. Furniture, fixtures, and equipment;

vii. Technology and signage; and

viii. Other soft costs, not to exceed five percent (5%) of the Capital Investment.

The Company shall provide written notice to the EDA signed by the Managing Member when the Company has invested 75% of the Capital Investment as provided above. The costs set forth in this Section 3(b) shall be subject to verification by the EDA based on documentation deemed sufficient by the EDA, and may include, but not be limited to, invoices.

c. The Company shall obtain a Certificate of Use and Occupancy ("CO") from the City in accordance with the terms of the Development Agreement.

d. The Company shall have in existence at the Project 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 the issuance of the CO and shall maintain the New FT Jobs throughout the term of this Agreement. The New FT Jobs set forth in this Section 3(d) 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.

e. The Company shall own and operate the Project as a Hyatt Place Hotel throughout the term of this Agreement.

f. The Company shall provide, at the Company's expense, detailed annual reports to the EDA on or before February 1st of each calendar year following the issuance of the CO so long as this Agreement is in force and effect. The annual report shall be in a form prescribed by the EDA and shall include detailed information on the Company's financial reports, including, but not limited to revenues from Rooms and Food and Beverages, and other performance metrics. 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 Project and attributed to the City pursuant to Code of Virginia §58.1-600 *et. seq.* and Code of Virginia §58.1-3700 *et. seq.* and shall complete any authorization forms requested the Commissioner for that purpose.

4. **Grant Performance Date.** No later than 45 business days prior to the disbursement of the EDA Lump Sum Grant, the Company shall certify in a writing to the EDA signed by the Company's Managing Member that: (i) it has fully satisfied all provisions of Sections 3(a) – 3(f) of this Agreement, including, but not limited to the Company's obligation to provide documentation deemed sufficient by the EDA to confirm the Company's Capital Investment and New FT Jobs. In addition the Company shall annually certify in writing to the EDA on or before February 1st continued compliance the provisions of Sections 3(d) – 3(f) of this Agreement which are continuing Company obligations .

5. **Economic Development Grants.**

a. The EDA Lump Sum Grant and the EDA Installment Grant as set forth in this Section 5 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 6.

b. The EDA shall pay to Hampton Lodging \$2,400,000.00 (the "EDA Lump Sum Grant") upon the occurrence of all of the following:

- i. Issuance of the CO by the City in accordance with the terms of the Development Agreement;
- ii. Opening the Project for business; and

iii. Having in existence the New FT Jobs.

c. The EDA shall pay to Hampton Lodging an additional grant in the maximum amount of \$593,330.00 to be paid to Hampton Lodging over the period of ten (10) consecutive calendar years in annual installments not to exceed \$59,330.00 (the "EDA Installment Grant"). The amount of each annual installment paid shall be based on a comparison of the Company's actual calendar year revenues from (1) "Rooms" and (2) "Food and Beverages" to the projected annual revenues for the same categories for the same calendar year as presented on the Operating Pro Forma (the "Pro Forma") attached as Exhibit A and incorporated herein. In any calendar in which the Company's actual revenues from "Rooms" and "Food and Beverages" equal or exceed the comparable revenues presented in the Pro Forma for the applicable year, the amount of the applicable installment of the EDA Installment Grant shall be \$59,330.00. In any calendar year in which the Company's actual revenues from "Rooms" and "Food and Beverages" are less than the comparable revenues presented in the Pro Forma for the applicable calendar year, the installment paid shall be proportionately reduced in the manner set forth in the following example:

Example: In calendar Year 1, the Company's combined actual revenues from (1) "Rooms" and (2) "Food and Beverages" are \$1,990,000.00. The Pro Forma for the same year presents revenues of \$2,054,123.00. The amount of the installment of the EDA Installment Grant to be paid shall be \$57,501.00 ($\$59,330.00 * (\$1,990,000.00/\$2,054,123.00)$).

The EDA Installment Grant shall be applicable to each calendar year or portion thereof commencing on the date on which all conditions set forth in Section 5(b) are satisfied. For any year in which the installment is based on actual revenues for less than a full calendar year, the revenues from (1) "Rooms" and (2) "Food and Beverages" as stated in the Pro Forma for the applicable year shall first be prorated based on the number of days for which revenues are reported divided by 365 prior to calculation of the installment payment as set forth above. Each installment of the EDA Installment Grant shall be paid on the first (1st) business day on or after July 1st of the year following the calendar year (or portion thereof) used as the basis for the installment to be paid.

d. In the event Hampton Lodging has not earned and received the maximum cumulative Allowable Economic Development Grant available on or before July 1st of the 10th calendar year after the first installment of the EDA Installment Grant is paid in accordance with the terms of this Agreement, the EDA will annually agree to extend this Agreement to allow Hampton Lodging the opportunity to earn and receive the maximum Allowable Economic Development Grant ("Annual Extension"). Each Annual Extension shall be executed no later than April 1st of the year preceding any year to which the extension shall apply, and shall be contingent upon Hampton Lodging providing an operating pro forma comparable to Exhibit A that presents the Company's projected combined revenues from (1) "Rooms and (2) "Food and Beverages" for any calendar year on which any such additional annual installment shall be paid. The EDA shall not be obligated to agree to extend this Agreement for any year in which the projected revenues for "Rooms" and "Food and Beverages" presented are less than the same revenues as presented for Year 10 of the Pro

Forma. For this purpose, "Allowable Economic Development Grants" shall be defined as Economic Development Grants less Offsets. In no event shall the total amount of Allowable Economic Development Grants exceed \$2,993,300.00 (the combined value of the maximum EDA Lump Sum Grant and EDA Installment Grant).

6. **Non-EDA Grants, Tax Credits and Offsets.** The EDA will work collaboratively with Hampton Lodging to the maximum extent practicable to obtain the following grants and tax credits; however the EDA provides no guarantee or assurance that Hampton Lodging will qualify for any or all of said grants and/or tax credits:

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 Hampton Lodging receives for the Project that exceeds \$556,800.00 ("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 Hampton Lodging is in an amount less than or equal to \$556,800.00. 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 \$150,000.00 ("Enterprise Offset"). In addition, the maximum amount of the Economic Development Grants shall not be increased in the event that Hampton Lodging receives any VA Enterprise Grant funding in an amount less than or equal to \$150,000.00.

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 Hampton Lodging 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."

7. **Repayment Obligation.** Subject to the notice and cure provisions of Section 9(j), any failure to satisfy the provisions, terms or conditions of this Agreement will result in forfeiture of any then remaining balance of Allowable 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.

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 the Company, to:

Hampton Lodging Partners LLC
Attention: Manager
249 Central Park Avenue, Suite 320
Virginia Beach, Virginia 23462

with a copy to:

Faggert & Frieden, Inc.
Attn: Alan M. Frieden, Esq.
222 Central Park Avenue, Suite 1300
Virginia Beach, Virginia 23462

if to the EDA, to:

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

with a copy to:

Office of the 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:** Hampton Lodging 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 Hampton Lodging under this Agreement and the assignor shall not be relieved

of any liability hereunder. Notwithstanding the limitation imposed above, Hampton Lodging may assign its interest in the Agreement to an entity in which the managing member of Hampton Lodging retains the same capital stock, partnership interest or membership interest, provided that no such assignment shall relieve Hampton Lodging of any liability 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. Failure by the Company to remain in compliance with the provisions of this section shall be deemed a material breach of this 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:** In the event of breach of the terms of this Agreement by any party hereto, the non-breaching party shall be entitled to recover from the breaching party its costs expended, including reasonable attorney's fees, in enforcing the remedies provided in this Agreement.

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. **Notice and Cure:** Neither party shall be deemed in default under this 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 such longer period of time as may be reasonably required to cure because of the nature of the default (provided such defaulting party must have undertaken procedures to cure the default within such 30 day period and thereafter diligently pursues such effort to completion).

k. **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 have the meaning ascribed to such term in the Development Agreement.

l. **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 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: _____
Name: _____
Title: Chair/ Vice-Chair

COMMONWEALTH OF VIRGINIA
City of Hampton, to-wit:

The foregoing Agreement was acknowledged before me this ____ day of September, 2016,
by _____ 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.

Notary Public

My commission expires: _____
Registration number: _____

Approved as to Content:

Approved as to Form & Legal Sufficiency:

Department of Economic Development

Patricia A. Melochick
Sr. Deputy City Attorney & Counsel to EDA

[Signatures continue on the following page.]

HAMPTON LODGING LLC

By: [Signature]
Managing Member

COMMONWEALTH OF Virginia
City of Virginia Beach to-wit:

The foregoing Agreement was acknowledged before me this 17th day of September, 2016, by AKHIL JAIN, Managing Member on behalf of Hampton Lodging LLC, a Virginia limited liability company. He is personally known to me or has produced _____ as identification.

[Signature]
Notary Public

My commission expires: 04/30/2020
Registration Number: 190965

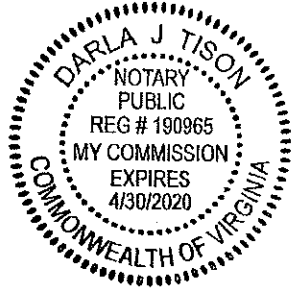


EXHIBIT A
PRO FORMA

EXHIBIT A

Operating Pro Forma - Hyatt Place, Hampton, VA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
REVENUES										
Rooms	\$ 1,994,294	\$ 2,280,515	\$ 2,564,311	\$ 2,675,771	\$ 2,817,075	\$ 2,894,345	\$ 2,949,784	\$ 2,994,030	\$ 3,038,941	\$ 3,084,525
Food & Beverage	\$ 59,629	\$ 68,415	\$ 75,929	\$ 80,273	\$ 84,512	\$ 86,830	\$ 88,494	\$ 89,821	\$ 91,168	\$ 92,536

The operating projections included herein were prepared for internal purposes only and represent an estimate of the results for the operating years in question, based upon assumptions by Landmark. These projections cannot be relied upon as a promise, guarantee, representation, warranty or assurance of actual results which may be experienced during or for such operating years. Landmark Hotel Group and its affiliates do not make any representations or warranties in connection with the projections or profitability of the hotel.