

DOWNTOWN HAMPTON
MASTER DEVELOPMENT AGREEMENT

PHASE I

By and Among

THE CITY OF HAMPTON, VIRGINIA;

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

THE HAMPTON REDEVELOPMENT AND HOUSING AUTHORITY;

And

THE WVS COMPANIES, LLC;

in partnership with SAUNDERS + CROUSE ARCHITECTS, LLC; and

WVS Hampton, LLC

Date Fully Executed by all Parties: _____

EXHIBITS:

- A – Map & Legal Descriptions of Project Properties
- B – Downtown Hampton Design Standards
- C – Downtown Commercial Uses

MASTER DEVELOPMENT AGREEMENT

THIS MASTER DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of the ____ day of _____, _____, by and among **THE CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “**City**”); **THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “**EDA**”), **THE HAMPTON REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**HRHA**”) (collectively, the “**Public Entities**”) and **THE WVS COMPANIES, LLC** in partnership with **SAUNDERS + CROUSE ARCHITECTS, LLC** and **WVS Hampton, LLC** (collectively, “**WVS-SC**” and/or “**Developer**”), all Virginia limited liability companies (collectively, the “**Parties**”).

RECITALS

1. The City, through its City Council, adopted a Downtown Hampton Master Plan in 2004 (“**Master Plan**”) to serve as a platform to coordinate new public and private investment in Downtown Hampton (“**Downtown**”) in order to facilitate economic development and tourism and to enhance the quality of life of its residents;
2. The Master Plan, which was most recently updated in June of 2017, identifies specific development opportunities for land owned by the Public Entities;
3. In March of 2016, the City received an unsolicited proposal from WVS-SC for a six-month purchase and development option on several parcels of publicly held property in Downtown Hampton, totaling approximately 16+/- acres (the “**Downtown Properties**”);
4. In November of 2016, the Public Entities negotiated a term sheet (“**Term Sheet**”) which granted WVS-SC a six-month option on the Downtown Properties and required WVS-SC to conduct a study of Downtown development potential, market demand, and financial feasibility of development of the Downtown Properties;
5. The Term Sheet also contemplated that WVS-SC would enter into a definitive development agreement for the purchase and development of one or more parcels of real property, should they desire to do so at the end of the six-month period;
6. In June 2017, at the conclusion of the six-month option period, WVS-SC presented a Development Strategy (“**WVS-SC Phase I Development Strategy**”) to the Public Entities and other Downtown stakeholder groups, including an offer to purchase a subset of the Downtown Properties that had been subject to the Term Sheet (the “**Project Properties**”) collectively containing approximately 6.18+/- acres;

7. The WVS-SC Phase I Development Strategy includes the following five (5) parcels of property currently owned by the City: a portion of 602 Settlers Landing Road (LRSN 2002990) containing 5,000+/- square feet (0.11+/- acres); an unaddressed parcel between Eaton and Wine Streets (LRSN 2003047) containing 1.42+/- acres; 136 Kings Way (LRSN 2002977) containing 1.76+/- acres; an unaddressed parcel on Lincoln Street (LRSN 2003041) containing 0.72+/- acres; an unaddressed parcel on Lincoln Street (LRSN 2003243) containing 0.73+/- acres,, as further described on EXHIBIT A;
8. The WVS-SC Phase I Development Strategy also includes the following four (4) parcels of property currently owned by the HRHA: an unaddressed parcel on S. King Street (LRSN 2002982) containing 1.09+/- acres; two parcels addressed 34 E. Queens Way (LRSN 2002881 and 2002882) containing 0.2+/- acres, and 32 E. Queens Way (LRSN 2002883) containing 0.15+/- acres as further described on EXHIBIT A;
9. To facilitate the WVS-SC Phase I Development Strategy, the City intends to subdivide and transfer the above-described portion of 602 Settlers Landing Road (LRSN 2002990) to the EDA, for the EDA to lease to WVS-SC in accordance with this Agreement;
10. WVS-SC intends to submit, at a future date, additional development strategies to include other parcels owned by the Public Entities in the Downtown area;
11. The WVS-SC Phase I Development Strategy includes construction of approximately 165+/- high-quality residential units which shall include approximately 11,950+/- square feet of commercial space;
12. WVS-SC has offered to purchase the Project Properties at currently assessed value and to construct improvements thereon which are consistent with the Master Plan and this Agreement in development phases and through various separate agreements with the Public Entities, as necessary, all as further described herein;
14. The Public Entities find that the WVS-SC Phase I Development Strategy is consistent with their policy goals and the Master Plan, which recommends increasing the population of Downtown to support a vibrant commercial base through addition of high-quality residential units; and
15. The Public Entities further find that the WVS-SC Phase I Development Strategy will stimulate growth of the Downtown area, and that it is in the interest of the citizens of Hampton to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and undertakings of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I – THE PROJECT

1.1. The Project. Subject to the other provisions of this Agreement, the Project shall consist of development by WVS-SC or its City-approved assigns of several Downtown Properties which are currently owned by the Public Entities. The following parcels of property, or portions thereof as described herein (“**Project Properties**”), are subject to this Agreement and are more specifically described on the attached EXHIBIT A. Development of the Project Properties shall be governed by the site-specific development criteria contained in this Agreement and as further refined on the “**City-Approved Concept Plans**,” which are further described in Paragraph 2.2(a). Deviation from the number of residential units and/or square footage of commercial space described in this Article may be approved by the City upon request of the Developer, which approval shall not be unreasonably withheld, conditioned, or delayed, provided such deviation is determined by the City to meet the overall goals of this Agreement and the Master Plan.

(a) **Goodyear Site – Mixed Use Development**. The following Project Properties collectively constitute the “**Goodyear Site**”: S. King Street (LRSN 2002982), 32 E. Queens Way (LRSN 2002883), and two (2) parcels addressed 34 E. Queens Way (LRSN 2002881 and LRSN 2002882), all of which are currently owned by the HRHA. On the Goodyear Site, the Developer shall construct at least one (1) mixed use building directly abutting the adjacent public streets, as applicable, which shall contain approximately 125 high-quality for-sale condominium units or for-rent apartment units and one (1) or more roof decks with views to the waterfront. All pedestrian ground-level space on Queens Way, Settlers Landing Road, and South King Street shall contain commercial uses consistent with the Hampton Zoning Ordinance and EXHIBIT C entitled, “**Downtown Commercial Uses**,” totaling approximately 11,950 square feet of commercial space. All buildings on the Goodyear Site shall be a minimum of four (4) stories in height, except for those fronting Queens Way, which shall be constructed at a height which shall not exceed the height of the existing Masonic Building located at 34 E. Queens Way measured at the primary roof parapet (approximately 48’ and 5”). Development of the Goodyear Site shall include preservation of said existing Masonic Building. The four (4) parcels comprising the Goodyear Site shall be designed, conveyed, and developed simultaneously unless a phased development is depicted on the City-Approved Concept Plans described in Paragraph 2.2(a).

(1) Assignment of Existing Lease on Goodyear Site. Developer acknowledges that the Masonic Building located at 34 E. Queens Way (LRSN 2002882) is subject to a lease agreement with a third party tenant. Accordingly, upon acquisition of the property, the HRHA shall assign all of its rights, obligations, and interest in and to the lease agreement as lessor to the Developer, unless a reasonable alternative that is acceptable to the HRHA, Developer, and the tenant is otherwise negotiated.

(b) **Macy Carmel Site – Mixed Use Development.** Upon 136 Kings Way (LRSN 2002977) (the “**Macy Carmel Site**”), which is currently owned by the City, the Developer shall construct a high-quality, mixed-use residential, commercial, and office development which is generally consistent with one (1) of the three (3) development models contained in the Master Plan. The proportion of each use type shall be determined at the time of development and to be based upon current market conditions. Acquisition and development of the Macy Carmel Site by the Developer is expressly contingent upon the City’s ability to reasonably relocate users of the existing building and receipt of notice from the City that the users have vacated the building, which is further described in Paragraph 2.3(a)(1).

(c) The Developer shall construct a minimum of 40 high-quality, for-sale townhouse units upon the following Project Properties, taken together, as follows:

(1) **Lincoln Street Corner Site (Also Known As “Syms Eaton Site”) – Townhouse Development.** The Developer shall construct high-quality, for-sale townhouse units on the unaddressed property on Lincoln Street (LRSN 2003041) (the “**Lincoln Street Corner Site**” or “**Syms Eaton Site**”), which is currently owned by the City, while reserving the 7,000+/- square foot area directly behind and to the east of the existing Old Hampton Commons development for open space or other Lincoln Corner Site community amenity.

(2) **Wine/Eaton Streets Parking Site – Townhouse Development.** The Developer shall construct high-quality, for-sale townhouse units upon two (2) portions of the unaddressed parcel between Eaton and Wine Streets (LRSN 2003047) (the “**Wine/Eaton Streets Parking Site**”), which is currently owned by the City. The Wine/Eaton Streets Parking Site shall be subdivided at the Developer’s sole cost and expense to: (i) extend Mill Point Drive across the northern property boundary of the Project Property, (ii) allow the City to retain an area in fee simple for approximately 50 public parking spaces mid-block, and (iii) facilitate the transfer of two parcels of frontage property abutting Wine and Eaton Street, respectively,

to the Developer. The general conceptual layout of the above-described subdivision is included in the Design Standards attached as EXHIBIT B.

(3) **Lincoln Street Frontage Site– Townhouse Development.** The Developer shall construct high-quality, for-sale townhouse units on the unaddressed property on Lincoln Street (LRSN 2003243) (the “**Lincoln Street Frontage Site**”), which is currently owned by the City.

(d) **Carousel Park Site – Restaurant.** The Developer shall construct a 3,000+/- square foot restaurant within a 5,000+/- square foot leased area, at 602 Settlers Landing Road (LRSN 2002990) (the “**Carousel Park Site**”), which is currently owned by the City but is intended to be transferred to the EDA to facilitate a long-term lease between the EDA and the Developer. Improvements to the Carousel Park Site shall occur outside of the conservation area boundaries as depicted in the land records and shall be designed so as not to interfere with the Hampton Roads Sanitation District (“**HRSD**”) force main located on the Site. The Carousel Park Site restaurant shall incorporate outdoor seating and shall be constructed so as not to obstruct views of the waterfront through the use of transparent materials and/or view-sensitive site design. The Developer shall be responsible and bear the costs for extension of the existing walkway on the Carousel Park Site through to the sidewalk along Settlers Landing Road.

(e) Additional properties owned by the Public Entities may be added to this Agreement upon written agreement of the Parties.

1.2. General Project Obligations of the Developer.

(a) Purchase and/or Lease of Project Properties. Subject to the terms of this Agreement, the Public Entities agree to sell and the Developer agrees to purchase the Project Properties in fee simple and at assessed value, except for the Carousel Park Site, which the Developer agrees to ground lease at fair market value for a term of years, and which shall be governed by separate agreement with the EDA.

(b) Project Improvements Generally. The Developer shall be responsible and bear the costs for design and construction of all improvements on the Project Properties contemplated in this Agreement, including preparation of all concept plans, subdivision and/or boundary line vacation or modification plats, site plans, zoning and building plans, building elevations, and other Hampton City Code requirements, as applicable to the Project Properties. The Developer shall develop all Project Properties in substantial conformance with the Master Plan, the Downtown Hampton Design Standards (“**Design**

Standards”) attached as EXHIBIT B, and the City-Approved Concept Plans as defined in Paragraph 2.2(a).

(c) Project Infrastructure Improvements. The Developer shall be responsible and bear the costs for design and construction of all on-site utilities and infrastructure as well as all necessary off-site infrastructure connections associated with the Project Properties, which shall include: (1) street and pedestrian improvements on all sides of the Project Properties to facilitate vehicular and pedestrian movements, including curb and gutter, sidewalks including paver sidewalks as required by the City, crosswalks, decorative pavement, landscaping, street lighting, street trees and tree wells, and other pedestrian amenities such as trash receptacles, benches, and planters, all in accordance with the Master Plan, the Design Standards attached as EXHIBIT B, the Public Works Design and Construction Standards, and the City-Approved Concept Plans, all of which shall be shown on the required site plan and/or subdivision plat, as applicable, submitted to the City for approval under the Hampton City Code; (2) water, sewer, storm drainage, irrigation systems, electricity and other utility services as necessary and as may be required pursuant to site plan and subdivision plat review; and (3) all repair and replacement of public improvements damaged by construction activity in furtherance of the Project.

1.3. General Project Obligations of the Public Entities.

(a) Parking and Pedestrian Access for Certain Project Improvements.

(1) Goodyear Site Parking Improvements. The City shall bear the costs for design and construction of parking spaces on the Goodyear Site at a cost not to exceed \$600,000.00, which shall be reimbursed to the Developer upon completion of the parking improvements and after conveyance by the Developer to the City of a permanent City easement over the public parking improvements on the Goodyear Site. If actual costs for design and construction of the parking improvements exceed \$600,000.00, the Developer shall be responsible for the remainder of the cost. The Developer and the City acknowledge that, depending on the density and layout of the Goodyear Site improvements as depicted on the City-Approved Concept Plans, it may not be feasible to construct all City Zoning Ordinance required parking spaces on the Goodyear Site, and that the Developer may be required to apply to the City Zoning Administrator for parking credits and/or to cooperate with the City to design alternatives to fully satisfy the City Zoning requirements.

(2) Other Parking and Pedestrian Improvements. Should the actual cost of design and construction of the Goodyear Site parking improvements described in Paragraph 1.3(a)(1) not require reimbursement of the total \$600,000.00, the City, in its sole discretion, may direct the remainder of the \$600,000.00 to other public improvements necessary to support the Project as mutually and reasonably agreed between the City and the Developer.

(b) Delivery of Documents. The Public Entities shall provide to the Developer all studies, reports, information, and other materials it has in its actual possession relating to the Project Properties, including but not limited to title reports, surveys, and environmental site assessments. The Developer acknowledges that the Public Entities shall not be held responsible for the content of any study, report, information, or other materials provided to the Developer hereunder.

(c) City Easements and Utilities. The City shall cooperate to the extent practicable with the Developer to modify and/or vacate City-held easements as may be necessary to facilitate development of the Project, provided that such easements are deemed unnecessary by the City and such modification or vacation of such easements would not impair existing City services and functions. The Developer shall be responsible and bear all costs for any applications, plats, design work, and physical relocation of existing utilities as may be necessary for this purpose.

(d) Lincoln Street Corner AKA Syms Eaton Site and Wine/Eaton Streets Parking Site Parking Easements. The City shall cooperate with the Developer, to the extent practicable, legally permissible, and as mutually agreed among the Parties, to facilitate the potential relocation of parking easements applicable to a total of nine (9) parking spaces upon the Lincoln Street Corner AKA Syms Eaton and Wine/Eaton Streets Parking Sites.

ARTICLE II – PURCHASE OF PROPERTIES; ACQUISITION CONTINGENCIES; RIGHT OF REPURCHASE

2.1. Purchase Price. The Public Entities agree to sell and the Developer agrees to purchase the Project Properties, except for the Carousel Park Site, which shall be governed by separate lease agreement, for their current assessed value (and for purposes of this Agreement and Closings hereunder, “current assessed value” shall be based on the assessment for the tax year beginning July 1, 2016 and ending June 30, 2017), as follows:

(a) The Goodyear Site. The total consideration for the four (4) parcels comprising the Goodyear Site is as follows: TWO MILLION ONE HUNDRED FORTY SIX THOUSAND TWO

HUNDRED DOLLARS AND NO 0/100 CENTS (\$2,146,200.00) (the “**Goodyear Site Purchase Price**”). The Goodyear Site Purchase Price shall be paid in lawful money of the United States of America by wire transfer of funds, in cash, or by certified check at the time of Closing.

(b) The Macy Carmel Site. If the City-Approved Concept Plans, as later defined in this Agreement, depict the re-use of the existing Macy Carmel Site building, then the total consideration shall be as follows: TWO MILLION ONE HUNDRED EIGHTY EIGHT THOUSAND SEVEN HUNDRED DOLLARS AND NO 0/100 CENTS (\$2,188,700.00) (the “**Macy Carmel Site Purchase Price – Alternative 1**”). In the alternative, if the City-Approved Concept Plans depict a complete redevelopment of the site to include demolition of the existing Macy Carmel Site building, then the total consideration shall be: FOUR HUNDRED FORTY EIGHT THOUSAND SEVEN HUNDRED DOLLARS AND NO 0/100 CENTS (\$448,700.00) (the “**Macy Carmel Site Purchase Price – Alternative 2**”). The Macy Carmel Site Purchase Price- Alternative 1 or Macy Carmel Site Purchase Price Alternative 2, whichever is applicable, shall be paid in lawful money of the United States of America by wire transfer of funds, in cash, or by certified check at the time of Closing.

(c) The Lincoln Street Corner AKA Syms Eaton Site. The total consideration for the Lincoln Street Corner AKA Syms Eaton Site is as follows: FIVE HUNDRED THOUSAND FOUR HUNDRED DOLLARS AND NO 0/100 CENTS (\$500,400.00) (the “**Lincoln Street Corner Site Purchase Price**”). The Lincoln Street Corner Purchase Price shall be paid in lawful money of the United States of America by wire transfer of funds, in cash, or by certified check at the time of Closing.

(d) The Wine/Eaton Streets Parking Site. The total consideration for the Wine/Eaton Streets Parking Site will be determined after an approved subdivision plat is recorded creating developable and transferable parcels in accordance with Paragraph 1.1(c)(2) herein and shall be calculated on a per-acre basis based upon the overall current assessed value of the Site (the “**Wine/Eaton Streets Parking Site Purchase Price**”). The Wine Street/Eaton Street Parking Site Purchase Price shall be paid in lawful money of the United States of America by wire transfer of funds, in cash, or by certified check at the time of Closing.

(e) The Lincoln Street Frontage Site. The total consideration for the Lincoln Street Frontage Site is as follows: TWO HUNDRED FORTY ONE THOUSAND TWO HUNDRED DOLLARS AND NO 0/100 CENTS (\$241,200.00) (the “**Lincoln Street Frontage Site Purchase Price**”). The Lincoln Street Frontage Purchase Price shall be paid in lawful money of the United States of America by wire transfer of funds, in cash, or by certified check at the time of Closing.

(f) The Carousel Park Site. Fair market rent for the Carousel Park Site leased area described in Paragraph 1.1(d) shall be governed by separate ground lease agreement between the EDA and the Developer, which shall incorporate all relevant terms of this Agreement, including but not limited to Design Review and approval by the City, which is further described in Paragraph 2.2(a).

2.2. Acquisition Contingencies.

Acquisition by the Developer of a fee simple interest in the Project Properties, and of a leasehold interest in the Carousel Park Site, shall be expressly contingent upon the satisfaction of all provisions of this Paragraph.

(a) Design Review Approval Contingency. Closing or lease execution, as applicable, for each Project Property is expressly contingent upon successful completion by the Developer of “**Design Review**,” which shall include submission and approval by the City, not to be unreasonably withheld, conditioned or delayed, of the following items (collectively “**Project Submittals**”): a “**Concept Plan**” as defined herein; concept elevation drawings of all sides of all proposed buildings, including descriptions of all building materials; general floor plans of all buildings; landscape and streetscape plan, if not incorporated into the Concept Plan; and sample building materials, if requested by the Community Development Director.

(1) Concept Plan Contents. The “**Concept Plan**” element of Design Review shall mean a plan of the proposed development of the applicable Project Property(ies) prepared by a duly licensed professional engineer, land surveyor, architect, or landscape architect authorized to do business in the Commonwealth of Virginia, showing the Project Property boundaries, existing and proposed buildings and uses, yards, open spaces, pedestrian walkways, landscaping, screening and buffering, fences, signs, access to the Project Property, on-site parking and vehicular circulation, easements, water bodies, floodplains, wetlands, and other natural features, existing and proposed streets, infrastructure improvements, and utilities and drainage facilities within one-quarter-mile of the subject Project Property. The Concept Plan shall also include the north point and shall be to-scale. A site plan generated to comply with Chapter 35.1 of the Hampton City Code may be submitted in lieu of a Concept Plan for each Project Property, provided that the site plan includes all such information described in this paragraph.

(2) Project Submittals Review Procedure. Upon receipt by the City of the Project Submittals, the Community Development Director or his designee shall

transmit same to appropriate City departments for review as may be necessary, retrieve comments, and develop a report identifying whether the Project Submittals comply with the terms of this Agreement, the Master Plan, the Design Standards, and the Public Works Design and Construction Standards, as applicable. The Community Development Director may consult with representatives of the HRHA and EDA, as appropriate, in developing comments on the Project Submittals. The Community Development Director shall have 30 days to respond to the Developer identifying in writing any deficiencies in the Project Submittals or approving the Project Submittals. The report shall also include a description of any Zoning Approvals as defined subsection (b) of this Paragraph 2.2 that may be needed to facilitate the Project on the subject Project Property.

(3) Design Review – Effect of Approval. Once approved by the Community Development Director, such Project Submittals shall be referred to as the “**City-Approved Concept Plans,**” which shall then be binding upon the Developer and shall govern construction of the Project as to the subject Project Property(ies). Minor changes to the City-Approved Concept Plans made necessary by environmental, engineering, architectural, topographic, or other development conditions, or site plan and subdivision approval requirements, may be permitted at any time, subject to the written approval of the Director of Community Development or his designee, which approval shall not be unreasonably withheld, conditioned, or delayed. **Design Review and approval of the Project Submittals is supplemental to and separate from the City’s development permitting process and, accordingly, approval of the Project Submittals shall not be deemed to be approval by the City that proposed development of any Project Property is in compliance with any Hampton City Code, Zoning Ordinance, or other requirement. If a site plan is submitted in lieu of a Concept Plan to facilitate the above-described Design Review, approval of the site plan for Design Review purposes shall not be construed to be approval of the site plan pursuant to Chapter 35.1 of the Hampton City Code or any other City regulatory requirement.**

(4) Pre-Application Conference. Prior to the formal submission of Project Submittals, City staff, if requested, shall meet with the Developer and/or the Developer’s agents to review the Master Plan, Design Standards, Public Works Design and Construction Standards, and other requirements governing the Project.

(b) Zoning Approval Contingency. Closing or lease execution, as applicable, on each Project Property is expressly contingent upon satisfactory approval by the City Council of

any rezonings, City-sponsored zoning ordinance amendments, use permits, and variances (“**Zoning Approvals**”) necessary to allow for the uses and improvements contemplated by this Agreement on the subject Project Property. The Public Entities agree to execute all necessary applications and to cooperate with the Developer in pursuit of such Zoning Approvals as owners of the Project Properties. The Developer shall be responsible for and shall bear the costs of obtaining all such Zoning Approvals, including preparation of all application materials and payment of required fees, with the exception of any City-sponsored zoning ordinance amendments, the responsibility and costs for which shall be borne by the City.

If any necessary Zoning Approval is denied and there is no reasonable alternative way to develop the Project Property in a manner that is consistent with the City-Approved Concept Plans, and further provided that the Developer did in fact make a good faith effort to obtain the required Zoning Approvals, in part by submitting all required applications to the City in a timely and complete manner and by participating collaboratively with the City in furthering the applications, then the Developer may terminate this Agreement as to that particular Project Property by giving written notice to the Public Entities. Upon such written notification this Agreement as to the particular Project Property shall be terminated and the Parties shall not have any further rights against, or obligations or liability to the others hereunder. This Agreement shall remain in full force and effect for all other Project Properties.

Nothing contained herein shall be interpreted or construed as a representation, assurance, or other promise that any Project Property can be successfully rezoned or that a use permit, City-sponsored zoning ordinance amendment, or variance will be approved. The Parties acknowledge that final approval of rezonings, zoning ordinance amendments, and use permits is controlled by the City Council for the City and that approval of variances is controlled by the City’s Board of Zoning Appeals. NOTHING IN THIS AGREEMENT SHALL CONSTITUTE OR BE DEEMED TO BE AN AGREEMENT BY THE CITY TO APPROVE A REZONING, USE PERMIT, ZONING ORDINANCE AMENDMENT, OR VARIANCE FOR ANY PROJECT PROPERTY.

(c) Site Plan and/or Subdivision Plat Approval Contingency. Closing or lease execution, as applicable, on each Project Property is expressly contingent upon final approval by the City of a site plan pursuant to Chapter 35.1 of the Hampton City Code, or, in the case of townhomes to be sold on separate fee simple lots, then upon final approval by the City of a subdivision plat pursuant to Chapter 35 of the Hampton City Code. Said site plan and/or subdivision plat, as applicable, shall depict the primary improvements, or in the case of townhomes, the townhome lots, on the subject Project Property.

(d) Financing Contingency. Closing or lease execution, as applicable, on each Project Property is expressly contingent upon the Developer delivering to the Director of Economic Development proof of secured financing for complete construction of the Project on the subject Project Property. Proof of secured financing may include, but shall not be limited to, an executed commitment letter from a reputable lending institution for construction financing of the Project on the subject Project Property.

2.3. Acquisition Time Frame.

(a) Acquisition Period. The Developer is granted 60 days from the date of full execution of this Agreement to transmit a complete set of Project Submittals in accordance with Paragraph 2.2(a) for at least one (1) Project Property to the City. The Developer is further granted, as to each Project Property, except for the Macy Carmel Site, twelve (12) months from the date of full execution of this Agreement to acquire all Project Properties (the “**Acquisition Period**”).

(1) With respect to the Macy Carmel Site, the Developer is granted six (6) months from the date written notice is sent from the City, which shall verify that all users of the existing building on the Site have vacated said building. In the alternative, if the City is unable to reasonably relocate users of the existing building on the Macy Carmel Site, the City shall provide written notice of such fact to the Developer, and this Agreement shall be terminated as to the Macy Carmel Site.

(b) Due Diligence Period. The Developer is granted 90 days from full execution of this Agreement (the “**Due Diligence Period**”) (i) to inspect the Project Properties and to perform such tests and examinations as the Developer deems advisable, including, without limitation, soil and environmental tests, in order to determine that the soils and subsurface conditions of the Project Properties are suitable, in the reasonable opinion of Developer, for the Project, and to determine the existence of any adverse environmental conditions in, on, under, about, or migrating from or onto the Project Property; and (ii) to make investigations with regard to matters of survey, title, stormwater, floodplain, utilities availability, building code, and other applicable governmental requirements with regard to the Project Property and the use thereof.

If the Developer determines during the Due Diligence Period that the soils and subsurface conditions of a particular Project Property are not suitable for the Project, that the existence of any adverse environmental matters or conditions in, on, under, about, or migrating from or onto said Project Property is unacceptable, or that any of its inspections, investigations and the like are unacceptable or unsatisfactory Developer in

its sole discretion, the Developer reserves the right to terminate this Agreement as to that particular Project Property by giving the Public Entities written notice of termination not later than 5:00 p.m. on the last day of the Due Diligence Period applicable to the subject Project Property. The notice shall specify the particular Project Property that is being removed from the Agreement. Upon receipt of such notification, the Parties shall not have any further rights against or obligations or liability to the others hereunder with respect to that Project Property. The Agreement shall remain in full force and effect for all other Project Properties not included in the above-described notice from the Developer.

(1) Access and Right of Entry. The Public Entities hereby grant the Developer a right of entry upon the Project Properties that are under their ownership for purposes of this Agreement. Access to the Project Properties shall be at the Developer's sole risk and expense. The Public Entities shall not be responsible for and the Developer shall indemnify and hold harmless the Public Entities and their respective agents, employees, volunteers, servants and officials against any and all claims, obligations, demands, actions or suits for bodily injury or property damage by any person arising from such access or the conduct of activities on the Project Property(ies) by the Developer, its agents, contractors, representatives, successors and assigns. Neither the Developer nor any of its agents or contractors shall suffer or cause to be created any lien or encumbrance arising from such activities, and the Developer shall repair any damage to the Project Property(ies) resulting from such access. The obligations set forth in this Paragraph shall survive Closing, delivery of the Deed or termination of this Agreement.

(2) Project Properties to be Purchased "As-Is"/Environmental Conditions. Except as to special warranty of title, the Project Properties will be conveyed or leased, as applicable, to the Developer "AS IS, WHERE IS, WITH ALL FAULTS" without any representations or warranties from the Public Entities, either expressed or implied. Further, the Public Entities shall not have any liability for the existence of Hazardous Substances (as such term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980), as the same may be amended from time to time (the "Act"), in or on the Project Property(ies) or for removal or remediation thereof.

(3) Title Review Period. Upon receipt of the documents delivered to it by the Public Entities pursuant to Paragraph 1.3(b) herein, and any title commitment ordered by the Developer for the Project Property (collectively, the "**Title Documents**"), the Developer shall examine such Title Documents and give notice

to the Public Entities prior to the end of the Due Diligence Period described herein, of any liens, tenancies, encumbrances, conditions, restrictions, or defects (the “**Title Defects**”) affecting title to the subject Project Property that are not acceptable to the Developer. Upon the failure of the applicable Public Entity to eliminate all Title Defects within 45 days after its receipt of notice from the Developer of same (“**Title Cure Period**”), the Developer may attempt, but shall not be obligated, to eliminate such Title Defects at its own expense. Should the Developer not elect to cure, or not successfully cure or waive the Title Defects within 60 days of expiration of the Title Cure Period, then the Developer may terminate this Agreement as to that particular Project Property by giving written notice to the Public Entities. Upon receipt of such notification, the Parties shall not have any further rights against or obligations or liability to the others hereunder with respect to that Project Property. The Agreement shall remain in full force and effect for all other Project Properties.

2.4. Closing. Closing for each of the Project Properties, except for the Carousel Site, shall occur within 15 days of certification by the Director of Economic Development that all acquisition contingencies set forth in Paragraph 2.2 have been satisfied by the Developer and the expiration of the Due Diligence and Title Review Periods, whichever occurs last. The Closing(s) shall take place at the Office of the City Attorney, 22 Lincoln Street, Hampton, Virginia. At Closing, the applicable Public Entity shall deliver to the Developer a good and sufficient deed (the “**Deed**”) with Special Warranty of Title, subject to the Deed Restrictions and Right of Repurchase described in Paragraph 2.5, but free and clear of any deeds of trust or other monetary liens.

(a) Closing Costs. The Developer shall be responsible for the following Closing costs: (1) fees and Grantee Taxes for recording the Deed in the Clerk’s Office, (2) title examination and insurance premiums, (3) financing costs, (4) any environmental studies, and (5) its own attorney’s fees and other expenses. The Public Entities shall be responsible for any delinquent or deferred real estate taxes and stormwater utility fees, preparation of the Deed, and its own attorney’s fees and other expenses. The Public Entities are exempt from Grantor Taxes on the Deed. Any real estate property taxes and stormwater utility fees shall be prorated as of the applicable Closing date for the Project Property.

(b) Carousel Park Site Lease Execution. Within 15 days of certification by the Director of Economic Development that all acquisition contingencies set forth in Paragraph 2.2 have been satisfied by the Developer and the expiration of the Due Diligence and Title Review Periods, whichever occurs last, the EDA shall deliver to the Developer a ground lease governing the area described in Paragraph 1.1(c). The Developer shall have the

right, at Developer's expense, to record in the Clerk's Office the ground lease and/or memorandum of thereof, which the EDA will execute upon presentation by the Developer. The Carousel Park Site Lease shall be negotiated in good faith during the Due Diligence Period.

2.5 Deed Restrictions and Right of Repurchase.

(a) Deed Restrictions. In order to preserve the integrity of the Master Plan and ensure that development of the Project Properties occurs according to the Master Plan and this Agreement, the Public Entities will convey all Project Properties subject to deed restrictions requiring strict compliance with the Project description set forth in Paragraph 1.1, the Master Plan, and the City-Approved Concept Plans (the "**Deed Restrictions**"). The Deed Restrictions shall also include the Right of Repurchase described in Paragraph 2.5(b). The Deed Restrictions shall be incorporated into the Deed, and the Developer, its successors and assigns shall be bound by the Deed Restrictions in its ownership and use of the Project Properties.

(b) Right of Repurchase. In the event the Developer fails to commence construction of the Project Property improvements depicted on the City-Approved Concept Plans in accordance with the Construction Schedule described in Paragraph 3.1, and such failure continues for more than 60 days following Developer's receipt of written notice, then the Public Entity which conveyed the parcel to the Developer shall have the right to repurchase the Project Property in the amount of the original purchase price paid for the Project Property ("**Right of Repurchase**"); whereupon Developer shall convey the Project Property back to the Public Entity by special warranty deed free and clear of liens and encumbrances other than (1) those encumbering the Project Property at the time conveyed by the Public Entity to the Developer, (2) those contained in the Deed(s) from the Public Entity to the Developer, and (3) those otherwise created or approved by the Public Entity. The Project Property shall be restored by the Developer to pre-Closing condition. Closing shall take place in the Office of the City Attorney within 30 days after the Public Entity's written notice to the Developer concerning its intent to exercise its Right of Repurchase for the subject Project Property. In the event the Developer for any reason fails or refuses to convey title back to the Public Entity as required herein, then, the Public Entity shall have the right to enter upon and take possession of said Project Property, along with all rights and causes of action necessary to have title to the Project Property conveyed back to the Public Entity.

Notwithstanding the foregoing, the Public Entities, as applicable, agree to release the Right of Repurchase for each Project Property, at the sole cost and expense of the Developer, by recording a release in the Circuit Court of the City of Hampton as soon as

practicable upon evidence that: (1) a building permit authorizing construction of the primary improvements on the Project Property has been issued in accordance with the Construction Schedule described in Paragraph 3.1; or (2) a Deed of Trust evidencing the fact that financing for the Project Property has been secured has been recorded in the Hampton Circuit Court. Furthermore, and notwithstanding anything to the contrary, the Public Entities, as applicable, agree to release the Right of Repurchase for all Project Properties that are included in a single townhouse development, as shown on the approved site plan or subdivision plat, upon evidence that (1) a building permit authorizing construction of the primary improvements on any parcel lying within the townhouse development on the Project Property has been issued in accordance with the Construction Schedule described in Paragraph 3.1; or (2) a Deed of Trust evidencing the fact that financing for the Project Property has been secured has been recorded in the Hampton Circuit Court. This paragraph shall survive Closing and delivery of the Deed.

ARTICLE III – PROJECT DEVELOPMENT AND CONSTRUCTION SCHEDULE

3.1 Construction Schedule. Upon the Closing or lease, as applicable, of any Project Property, the Developer shall thereafter diligently pursue construction of the Project upon said Project Property in accordance with the terms of this Agreement. Accordingly, for each Project Property the Developer shall, if not previously submitted: (1) submit a complete set of Building Plans pursuant to Chapter 9 of the City Code (“**Building Plans**”) within 30 days of Closing or lease and thereafter diligently pursue approval of said Building Plans in part by making all revisions required by the City Code and other City regulations in a timely manner, and (2) obtain a building permit for construction of the primary improvements upon the Project Property within 6 months of Closing or lease. The improvements shown on the City-Approved Concept Plans shall be open and operational, as evidenced by issuance of a Temporary or Final Certificate of Occupancy from the City Building Official, no later than 18 months from Closing or lease, as applicable. The City’s Director of Economic Development may, upon written request by the Developer requesting an extension, and upon a showing that the Developer has diligently pursued completion of the project on a Project Property, extend this period to 24 months from Closing or lease, as applicable. Such extension shall not be unreasonably withheld. Failure to submit Building Plans, or to obtain the building permit and Certificate of Occupancy as set forth herein, shall constitute a default and an Event of Termination in accordance with Paragraph 4.1(a) if such default is not satisfied by the cure period therein.

3.2 Construction Issues.

(a) Compliance with all Laws. The Project on each Project Property shall be constructed in full compliance with all applicable federal, state, and local laws, rules and

regulations and all construction shall be of good quality and shall be made in a workmanlike manner consistent with the highest industry standards. The Developer shall supervise and direct construction of the Project on each Project Property using its best skill and attention, and agrees that it shall be solely responsible for all construction methods, techniques and procedures. The Developer shall be responsible for any costs associated with changes to local laws made necessary by changes in state and federal legislation or regulations.

(b) Maintenance of Construction Sites. During construction of the Project, the Developer shall keep the Project Property clean and in good order, reasonably free of trash and construction debris. If the Developer fails to do so, the City may issue a written warning to the Developer identifying the section of the Property that the Developer has failed to maintain as set forth herein. If the Developer does not correct the condition within 30 days of its receipt of such written notice, the City may clean the Project Property and charge the Developer for all its costs and expenses incurred.

(c) Inspections. During construction of the Project on each Project Property, City Community Development, Public Works, and Economic Development staff may make periodic inspections at reasonable times after notice to the Developer (unless inspections are requested by the Developer or any contractor or subcontractors on the Project, in which case no notice shall be required) to ensure ongoing compliance with the terms of this Agreement, the Hampton City Code and Zoning Ordinance requirements, City-Approved Concept Plans, Master Plan, Site Plan, and other regulations.

3.3. Survival. The provisions of this Article IV shall be continuing obligations of the Developer and shall survive Closing and delivery of the Deed(s).

ARTICLE IV – EVENTS OF TERMINATION

4.1 Events of Termination by the Developer. Each of the following shall constitute an Event of Termination by the Developer:

(a) Breach of any material covenant, obligation, or requirement of the Developer arising under this Agreement, the Deed(s), and the continuation of such breach for 45 days after receipt of written notice from the City specifying the nature and extent of such breach, or if such breach cannot reasonably be cured within such 45-day period, the failure of the Developer to commence to cure such breach within such 45-day period and to diligently pursue same to completion.

(b) The filing by the Developer of a voluntary proceeding or the consent by the Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.

(c) The entering of an order for relief against the Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of the Developer in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of 90 consecutive days.

4.2 Events of Termination by the Public Entities. Each of the following shall constitute an Event of Termination by the Public Entities:

(a) The failure of the Public Entities to perform or to observe any covenant, obligation or requirement of this Agreement not specifically named as an Event of Termination in this Paragraph 4.2, and the continuation of such failure for 45 days after receipt of written notice from the Developer specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such 45-day period, the failure of either (1) to commence to cure such default within such 45-day period and to diligently continue to pursue such efforts to cure to completion, or (2) to cure such Event of Termination within a reasonable time after the expiration of the first 45-day period, and to diligently pursue the same to completion.

4.3 Remedies of the Developer. Should an Event of Termination by the Public Entities occur hereunder, the Developer may seek specific performance, or by written notice to the Public Entities, terminate this Agreement with respect to a particular Project Property or as to the entire Agreement, as applicable, upon which termination the Developer may exercise any remedies available to it at law or in equity, except that the Public Entities shall not be liable to the Developer for damages that are consequential in nature, but shall be liable only for recovery of out-of-pocket costs actually incurred by the Developer after execution of this Agreement, excluding internal project administration costs incidental to the physical improvements on the Project Properties such as permitting, inspections, plan preparation and review, environmental testing, surveying, architectural and civil planning, construction management fees and legal fees.

4.4 Remedies of the Public Entities. Should an Event of Termination as outlined in Paragraph 4.1 by the Developer occur hereunder, the Public Entities may, by written notice to the Developer, terminate this Agreement with respect to a particular Project Property or as to the entire Agreement, as applicable, and, in addition, may exercise any remedies available to them at law or in equity, except that the Developer shall not be liable to the Public Entities for damages that are consequential, exemplary, or punitive in nature, but shall be liable only for recovery of out-of-pocket costs actually incurred by the Public Entities after execution of this

Agreement, excluding internal project administration costs incidental to the physical improvements on the Project Properties such as permitting, inspections, plan preparation and review, environmental testing, surveying, architectural and civil planning, construction management fees and legal fees. All remedies provided to the Public Entities under this Agreement shall be cumulative and not restrictive of other remedies, including, without limitation, specific performance or the Public Entities' exercise of the Right of Repurchase as specified in Paragraph 2.5 above.

ARTICLE V – INSURANCE REQUIREMENTS

5.1 General Liability Insurance. The Developer shall carry comprehensive general liability insurance insuring the Developer against any and all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of the Developer and its agents, contractors or employees, in connection with the design and construction of the Project in the amount of Two Million Dollars (\$2,000,000.00) for any single occurrence along with an umbrella general liability policy of not less than Five Million Dollars (\$5,000,000.00). Such policy or policies shall specifically include pile driving operations. The Developer may procure and maintain a “blanket” All Risk policy to satisfy the requirements of this Paragraph, which may cover other property or locations of the Developer and its affiliates and/or the affiliates of a member of the Developer, so long as the coverage required in this Paragraph is separate and specific to the Project.

5.2 Policy Requirements. The following general requirements shall apply to all insurance coverage carried by the Developer pursuant to Paragraph 5.1:

(a) Financially Sound Company. Such policies shall be procured from financially sound and reputable insurers licensed to do business in the Commonwealth of Virginia and have an A.M. Best rating of not less than A-8 or, if not rated with A.M. Best, the equivalent of A.M. Best's surplus size of A-8.

(b) Certificates of Insurance. The Developer shall deliver to the Public Entities policies or certificates of insurance evidencing such coverage before the commencement of construction.

(c) Replacement Certificates of Insurance. Within 30 days before expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be delivered by the Developer to the Public Entities.

(d) Non-Cancelable Without Notice. The coverages shall be non-cancelable unless the carrier gives to the Public Entities 30 day's prior written notice of cancellation.

5.3 Environmental Considerations.

(a) For purposes of this Paragraph 5.3, the term “Developer Parties” shall mean the Developer as otherwise defined in the Agreement as well as its agents, officers, employees, contractors, subcontractors, consultants, sub-consultants, or any other persons, corporations or legal entities employed, utilized or retained by the Developer.

(b) Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of Hazardous Substances, including, but not limited to, the cost of any cleanup activities, removals, remediation, responses, damages, fines, administrative or civil penalties or charges imposed on the Public Entities, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any Hazardous Substances by the Developer Parties, or any noncompliance by the Developer Parties with or the failure to meet any federal, state or local standards, requirements, laws, statutes, regulations, or the law of nuisance by the Developer (or by its agents, officers, employees, contractors, subcontractors, consultants, sub-consultants, or any other persons, corporations or legal entities employed, utilized or retained by the Developer) in the performance of this Agreement under the Due Diligence activities under Paragraph 2.3 or from the Closing Date, shall be paid by the Developer. This Paragraph shall survive the termination or expiration of this Agreement and Closing on the Project Property(ies).

5.4 Workers' Compensation Insurance. The Developer shall maintain such workers' compensation insurance as may be required pursuant to the laws of the Commonwealth of Virginia.

ARTICLE VI – COMPLIANCE WITH STATE AND FEDERAL LAW

6.1 Non Discrimination/Equal Opportunity Employer. The Developer represents that it is an Equal Opportunity Employer. In keeping with this policy, the Developer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, natural origin, age, disability or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Developer. Similarly, the Developer will continue to administer all other personnel matters (such as compensation, benefits, transfers, lay-offs and training) in accordance with the requirements of federal and State law. In addition, the Developer will use commercially reasonable efforts to recruit well-qualified minorities for its work force. The Developer shall also require that each of its construction contractors or subcontractors are also

Equal Opportunity Employers and that they extend the same policies as set forth in this Article VII to their respective personnel.

6.2 Mandatory Contract Provisions. The Developer agrees to insert the following requirements in all bid documents, contracts, and purchase orders of over \$10,000.00 pertaining to this Agreement, and to require all contractors to include such requirements in its subcontracts over \$10,000.00:

(a) that such contractors and subcontractors, as applicable, will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor or subcontractor, as applicable;

(b) that such contractors and subcontractors, as applicable, will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of Paragraph 6.2 hereof. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Paragraph 6.2;

(c) that such contractors and subcontractors, as applicable, will provide a "drug-free workplace" for the contractor's or subcontractor's employees, with "drug-free workplace" meaning a site for the performance of work where the employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract;

(d) that such contractors and subcontractors, as applicable, will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's or subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(e) that such contractors and subcontractors, as applicable, will state in all solicitations or advertisements for employees placed by or on behalf of the contractor or subcontractor that such contractor or subcontractor, as applicable, maintains a drug-free workplace; and

(f) that such contractors and subcontractors, as applicable will certify they do not and shall not during the performance of the contract knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

ARTICLE VII – REPRESENTATIONS AND WARRANTIES OF THE PARTIES

7.1 Representations and Warranties by the Developer. In order to induce the Public Entities to enter into this Agreement, the Developer represents and warrants as follows:

(a) The Developer is a duly organized and validly existing legal entity under the laws of the Commonwealth of Virginia and has the power and authority to own its properties and other assets and to transact the business in which it is now engaged or proposed to engage.

(b) The Developer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by the Developer in connection with its obligations hereunder. The execution, delivery and performance by the Developer of this Agreement have been duly authorized by all requisite action by the Developer, and this Agreement is a valid and binding obligation of the Developer enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

(c) The Developer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any evidence of indebtedness of the Developer or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Incorporation of the Developer or of any agreement or instrument to which the Developer is now a party or otherwise bound or to which any of its properties or other assets is subject, or of any order or decree of any court or governmental instrumentality, or of any arbitration award, franchise or permit, or constitute a default thereunder, or, except as contemplated hereby, result in the creation or imposition of any lien or other encumbrance upon any of the properties or other assets of the Developer.

(d) There are no actions, suits, investigations or proceedings (whether or not purportedly on behalf of the Developer) pending or, to the knowledge of the Developer, threatened against or affecting the Developer or the Project or any other of the assets or properties of the Developer at law or in equity or before or by a governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before an arbitrator of any kind, which involve the possibility of liability in excess of \$100,000.00 or of any material adverse effect on the business operations, prospects, properties or other assets or in the condition, financial or otherwise, of the Developer, or of the Project, and the Developer is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(e) To its best knowledge, the Developer is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially and adversely affect the business, operations, prospects, properties or other assets, or the condition, financial or otherwise, of the Developer or of the Project. The Developer has received no notice of, and to its best knowledge, is not in default (1) under any obligation for borrowed money, or (2) in the performance, observance or fulfillment or any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party, by which it is otherwise bound or to which any of its property or the Project is subject.

(f) To the Developer's best knowledge, neither this Agreement nor any document, certificate or financial statement furnished to the Public Entities by or on behalf of the Developer in connection herewith, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact known to the Developer which materially adversely affects or in the future may (so far as it is now known to the Developer) have a material adverse effect upon the business, operations, prospects, property, other assets or financial condition of the Developer or of the Project which has not been set forth in this Agreement or in other documents, certificates and financial statements furnished to the Public Entities or on behalf of the Developer in connection with the transactions contemplated hereby.

7.2 Representations and Warranties by the Public Entities. In order to induce the Developer to enter into this Agreement, the Public Entities represent and warrant to the Developer as follows:

(a) The EDA and HRHA are political subdivisions of the Commonwealth of Virginia and the City is a municipal corporation of the Commonwealth of Virginia, each possessing the full legal right, power, and authority to enter into and perform its obligations under this Agreement.

(b) The Public Entities have the power and authority to execute, deliver, and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by the Public Entities in connection with its obligations hereunder.

(c) The execution, delivery, and performance by the Public Entities of this Agreement has been duly authorized by all requisite action by EDA board, HRHA board, and the City Council, as applicable and this Agreement is a valid and binding obligation of the Public Entities enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

ARTICLE VIII – MISCELLANEOUS

8.1 Successors, Assigns, and Joint Liability.

(a) This Agreement is binding upon and shall inure to the benefit of the City, the EDA, the HRHA, the Developer, and their respective successors and assigns.

(b) The Developer may not assign its interest or any part thereof in this Agreement without the prior written approval of the City, which shall not be unreasonably withheld, conditioned or delayed, and upon such approval, the assignee shall assume all of the obligations of the Developer under this Agreement and shall not relieve the assignor of any liability hereunder. Notwithstanding the limitation imposed above, the Developer may assign its interest in this Agreement to an entity in which THE WVS COMPANIES, LLC or SAUNDERS + CROUSE ARCHITECTS, LLC or its employees are a general partner or manager, or the owner of at least 51% of the capital stock, partnership interest, or membership interest, provided that no such assignment shall relieve the Developer of any liability hereunder.

(c) The term “Developer” as used herein refers to each of the undersigned developers and their respective successors and assigns. The obligations under this Agreement of each of the undersigned developers shall be joint and several. Each of the undersigned developers unconditionally executed and delivered this Agreement.

8.2 Consents and Approvals. The City, the HRHA, the EDA, and the Developer commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of any of the Parties, any consent or approval contemplated under this Agreement shall not be unreasonably withheld, conditioned or delayed, except that this covenant does not apply to permits required from the City in connection with the Project.

8.3 Entire Agreement. This Agreement incorporates all prior negotiations and discussions among the Parties regarding its subject matter and represents the entire agreement of the Public Entities and the Developer for the Project. This Agreement may only be modified by written instrument executed by the Public Entities and the Developer.

8.4 Headings. The captions and headings of the articles and paragraphs contained herein are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

8.5 Notices. A notice, communication, or request under this Agreement shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable Parties as follows:

The Developer: THE WVS COMPANIES, LLC in partnership with SAUNDERS +
CROUSE ARCHITECTS, LLC and WVS Hampton, LLC
Attn:
Address:

And Copy to: [XXX]

The Public Entities: City of Hampton, Virginia
Attn: City Manager
22 Lincoln Street
Hampton, Virginia 23669

And Copy to: City of Hampton, Virginia
Attn: City Attorney
22 Lincoln Street

Hampton, Virginia 23669

And Copy to: Hampton Redevelopment and Housing Authority
Attn: Executive Director
1 Franklin Street
Hampton, Virginia 23669

And Copy to: Hampton Redevelopment and Housing Authority
Attn: Raymond H. Suttle, Jr.
Jones, Blechman, Woltz & Kelly, P.C
701 Town Center Drive, Suite 800
Newport News, VA 23606

And Copy to: Economic Development Authority of the City of Hampton, Virginia
Attn: City of Hampton Director of Economic Development
1 Franklin Street
Hampton, Virginia 23669

Any notice, communication, or request so sent shall be deemed to have been "given" (a) as of the next business day after being sent, if sent by nationally recognized express mail service, (b) as of the fifth business day after being sent, if sent by Registered or Certified U.S. Mail or (c) upon receipt, if sent by hand delivery. The Parties may change their address for notice purposes by giving notice thereof to the other Parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

8.6 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable.

8.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to an original, and such counterparts shall constitute one and the same instrument.

8.8 Choice of Laws and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia, including conflicts of

laws. Any lawsuit, action, or proceeding arising under this Agreement shall be brought exclusively in a court of competent jurisdiction in the City of Hampton, Virginia.

8.9 Force Majeure. For the purpose of any of the provisions of this Agreement, neither the Public Entities nor the Developer, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, including, but not limited to, the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to causes beyond its 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 Paragraph 8.9 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 this Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above, (a) the Developer may not rely on its own acts or omissions as grounds for delay in its performance, and (b) the absence of immediately available funds shall not be grounds for delay by the Developer.

8.10 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the Public Entities and the Developer or as constituting the Developer as the agent or representative of the Public Entities for any purpose or in any manner under this Agreement, it being understood that the Developer is an independent contractor hereunder.

8.11 Representatives Not Individually Liable. No official, representative, or employee of the Public Entities shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Public Entities for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement. No officer, director, representative, or employee of the Developer shall be personally liable to the Public Entities in the event any default or breach by the Developer for any amount which may become due to the Public Entities or on any obligations under the terms of this Agreement.

8.12 Ancillary Documents. The Chair or the Vice-Chair of the EDA and HRHA is authorized, on behalf of the EDA and HRHA, respectively, and the City Manager of the City of Hampton is authorized on behalf of the City, to execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by this Agreement, provided such documents do not materially alter the relationship of the Parties or the principal elements of the Project, and to grant such approvals and consents on behalf of the EDA, HRHA, and the City without additional formal approval of the EDA, HRHA, and the City Council. Notwithstanding the foregoing, additional formal approvals by the EDA, HRHA, and City Council may be required for development of the Carousel Park Site, which shall be governed by separate agreement.

8.13 Broker. The Public Entities and the Developer each represent and warrant for themselves that it has not dealt with any broker in connection with this Agreement and each covenants and agrees to indemnify and hold the other harmless, to the extent permitted by law and without waiving its sovereign immunity, if applicable, from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this warranty.

8.14 Third Party Beneficiary. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

8.15 Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Agreement call for any payment or the performance of any act, including the expiration date of any cure periods provided herein, on or by a date that is not a "Business Day", then such payment or such performance shall be required on or by the immediately succeeding "Business Day", which term shall mean a day other than a Saturday, Sunday, or legal holiday in the Commonwealth of Virginia.

8.16 Incorporation into Agreement. All exhibits, schedules, and recitals form a part of this Agreement.

8.17 Conflict of Terms. It is the intention of the Public Entities and the Developer that if any provision of this Agreement is capable of two constructions, one of which would render this

provision valid and enforceable, then the provision shall have the meaning that renders it valid and enforceable.

8.18 No Waiver. No failure on the part of the Public Entities or the Developer to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

8.19 Compliance with Laws. The Developer shall, at all times, be subject to all applicable governmental laws, ordinances, rules and regulations (collectively, the "Applicable Laws") pertinent to the Project, this Agreement, and the Developer's actions in connection with the Project and this Agreement.

8.20 Good Faith and Fair Dealing. The Parties covenant and agree each to the other that its conduct under this Agreement, and the interpretation and enforcement of the provisions hereof, shall be characterized by good faith and fair dealings so that the objectives of each party as set forth in this Agreement may be achieved.

8.21 Sovereign Immunity. Nothing contained in this Agreement shall be deemed to be, or have the effect of being, a waiver by the EDA, HRHA, the City or any other governmental agency, of such sovereign immunity it may have under the laws of the Commonwealth of Virginia or of the United States.

WITNESS the following signatures:

[SIGNATURES ON FOLLOWING PAGES]

THE CITY OF HAMPTON, VIRGINIA:

By: _____
Mary B. Bunting, City Manager

Date: _____

Approved as to Content:

Director of Economic Development and
Secretary to the EDA

Date

Certified as to Availability of Funds:

Director of Finance
Budget Code: []

Date

Approved as to Legal Sufficiency:

City Attorney and Counsel to the EDA

Date

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

By: _____
Eleanor Brown, Chair

Date: _____

THE HAMPTON REDEVELOPMENT AND HOUSING
AUTHORITY:

By: _____
Steve Brown, Chair

Date: _____

Approved as to Legal Sufficiency:

Counsel for the HRHA

Date

WVS COMPANIES, LLC

By: _____

Its: _____

Date: _____

SAUNDERS + CROUSE ARCHITECTS, LLC

By: _____

Its: _____

Date: _____

WVS HAMPTON, LLC

By: _____

Its: _____

Date: _____

EXHIBITS