

## COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (“Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the Economic Development Authority of the City of Hampton, a political subdivision of the Commonwealth of Virginia (the "EDA"), and the City of Hampton, a municipal corporation of the Commonwealth of Virginia (the "City").

### WITNESSETH:

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

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

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

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

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

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

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

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

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

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

5. Annual Appropriations and Payments.

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

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

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

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

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

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

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

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

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

If to the EDA:

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

If to the City:

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

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

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

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

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

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

THE ECONOMIC DEVELOPMENT AUTHORITY  
OF THE CITY OF HAMPTON

By: \_\_\_\_\_  
Chair/ Vice-Chair

CITY OF HAMPTON

By: \_\_\_\_\_  
City Manager

Approved as to form and legal sufficiency:

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Vanessa T. Valdejuli  
City Attorney and Counsel for the EDA