

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 in the 2004 Downtown Hampton Master Plan, as amended the renovation and reuse of the Hampton Armory, located at 504 North King Street, as a key element in the revitalization of the Armory Initiative to anchor this area of downtown Hampton;

WHEREAS, on November 17, 2015 the City issued a request for proposals ("RFP") for the renovation and reuse of the Hampton Armory as a life entertainment venue, craft brewery/brewpub or craft distillery with the goal of securing an experienced developer to renovate and reuse the Hampton Armory to create a destination in downtown Hampton;

WHEREAS, 504-520 N King Street LLC, a Virginia limited liability company ("Developer") submitted a proposal that met the City's objectives and would ensure the success of the Hampton Armory development as outlined in the RFP;

WHEREAS, pursuant to Council policy the EDA is tasked with the sale and redevelopment of commercial properties in the City of Hampton, and as such, proposes to accomplish Council's priorities of the renovation of the Hampton Armory as a life entertainment venue, craft brewery/brewpub or distillery (the "Project") through a development agreement together with the issuance of financial incentives in the form of a "Property Conditions Credit" in the amount of \$610,498.00 toward the purchase price of the Hampton Armory, and reimbursements for the relocation and installation of certain on-site infrastructure and removal of hazardous materials from the Hampton Armory in the maximum amount of \$494,000.00 ("Incentive Funding");

WHEREAS, the Property Conditions credit and the Incentive Funding are necessary to assist the Developer in offsetting the high cost of renovating this historic building, new infrastructure improvements, materials abatement, and other physical improvements;

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

WHEREAS, negotiations between the EDA and the Developer have culminated in a "Development Agreement", a copy of which is 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. City to Provide Funds to the EDA. Subject to appropriation by Council and the other limitations contained in Section 6 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. Specifically, the City pledges its moral obligation, subject to the terms set forth in Section 6 below, to deliver to the EDA sufficient funds for the EDA to make timely payment of the Incentive Funding in the Development Agreement.

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

3. 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 redevelopment 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.

4. 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.

5. 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 EDA and City obligations under the Development 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 Development 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.

6. 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. 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 Council and shall not at any time constitute a legal obligation of the City with respect to the Development 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 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 her 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 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 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 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 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, 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.

7. 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 Development Agreement.

8. 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.

9. 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.

10. 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.

11. 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 Incentive Funding is paid in full in a timely manner.

THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON

By: 
Chair/ Vice-Chair

CITY OF HAMPTON

By: _____
City Manager

Approved as to form and legal sufficiency:

Vanessa T. Valldejuli
City Attorney and Counsel for the EDA

DEVELOPMENT AGREEMENT

By and Between

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON

and

504-520 N KING ST, LLC

As of August 22, 2016

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "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"), **504-520 N KING ST, LLC** a Virginia limited liability company (the "Developer") or Assigns.

RECITALS

A. Subject to the terms and provisions of this Agreement, the Developer desires to acquire, re-develop and renovate the structure known as the Hampton Armory (the "**Hampton Armory**") for a craft brewery/brewpub, live entertainment venue and possible craft distillery (the "**Project**" as hereinafter defined) on that certain parcel of EDA-owned real property located in the Downtown Area of the City of Hampton, Virginia depicted as "Parcel A" totaling 52,472 square feet ±; 1.2046 acres ±) on a plat recorded in the Clerk's Office as Instrument 160008582 (the "**Property**") as shown on Exhibit A.

B. The EDA finds that it is in the public interest of the citizens of the City of Hampton and that it is consistent with the City's economic development goals and the 2004 Downtown Master Plan, as amended, for the Project to be developed in order to increase tax revenues and stimulate revitalization of the area surrounding the Property. Accordingly, the EDA agrees to sell the Property to the Developer subject to the terms and conditions of this Agreement.

C. It is the intention of the parties hereto that the Developer shall assume significant financial risk in undertaking the Project and that all risks of cost overruns, labor difficulties, and the like, that are integral to making the Project a success after fulfillment of the EDA's obligations hereunder, are the sole responsibility of the Developer.

DEFINITIONS

For the purposes of this Agreement, and in addition to terms defined elsewhere in this Agreement, the following defined terms shall have the meanings ascribed thereto in this Definitions Section.

"**Assigns**" shall mean any legal entity which is controlled by 504-520 N King St, LLC, or an entity in which 504-520 N King St, LLC or its employees are the general partner or manager, or the owner of at least 51% of the capital stock, partnership interest or membership interest or if such entity has common ownership with the Developer.

"**City**" shall mean the City of Hampton, Virginia, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia.

"**Clerk's Office**" shall mean the Clerk's Office of the Circuit Court of the City of Hampton, Virginia.

"**Closing Date**" shall have the meaning given in Section 4.2.

“Code Requirements” means the building code and zoning laws, rules, regulations and site plan and subdivision requirements of the City applicable to the Project including, without limitation, the 2004 Downtown Master Plan, as amended.

“EDA Representative” means the Director of the Economic Development Department of the City of Hampton or his authorized designee.

“Effective Date” shall mean the date on which this Agreement has been executed by all parties hereto.

“Event of Termination” shall mean those events listed in Article VI.

“Hazardous Substances” shall have the meaning set forth in Section 3.1.6.

“Master Plan” shall mean the 2004 Downtown Master Plan, as amended and specifically the Armory Initiative.

“Plans” shall have the meaning set forth in Section 3.1.1.

“Project” shall have the meaning set forth in Article I.

“Site Plan” means the formal engineered site plan for the Project as required by the City Code.

“Title Defects” shall have the meaning set forth in Section 3.1.5.

“Title Documents” shall have the meaning set forth in Section 3.1.5.

AGREEMENT

In consideration of the mutual promises and undertakings of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the EDA agree as follows:

ARTICLE I

THE PROJECT

1.1 The Project. Subject to the other provisions of this Agreement, the “Project” shall consist of the redevelopment and renovation of the Hampton Armory for a craft brewery/brewpub and live entertainment. The Project shall also include plans for a craft distillery subject to legal approvals. The Project will be consistent with the Master Plan regarding exterior renovations, additions, open space, landscaping and parking. All design elements, materials and configuration and general quality of the Project with respect to any additions and exterior renovations will be submitted as part of the proffers for the rezoning of the Property.

1.2 Infrastructure Improvements. The "Project" shall include design and construction of on-site utilities and on-site infrastructure as set forth in **Exhibit B** attached hereto. The cost of

such on-site utilities and on-site infrastructure set forth in **Exhibit B** shall be reimbursed to the developer as set forth in Subsection 1.4.

Additionally, the "Project" shall include all necessary off-site connections associated with the Project, which may include water, sewer, storm drainage, street lights, irrigation systems, electricity and other utility services and curb and gutter, the costs of which shall be borne by the Developer. All street cuts to be patched in accordance with the City's Public Works standard in place at the time of the work. Additionally, the Developer shall be responsible and bear the costs of any repair or replacement of improvements, or construction of new improvements in the public right of way between the boundary line of the Property and the curb line of adjoining streets, hereinafter to include curb and gutter, all sidewalks around the Property, paver sidewalks as applicable, landscaping, including trees, tree wells and pedestrian amenities, all in accordance with the Master Plan, and as shown on the approved Site Plan, proffered development plan or as may be damaged by construction activity.

1.3 Hazardous Materials Abatement. Pursuant to **Exhibit B**, the Developer shall be responsible for all hazardous materials abatement located in the or about the structure located on the Property and the Property itself as may be required by federal, state and local agencies.

1.4 Reimbursement for Infrastructure Improvements and Hazardous Materials Abatement. Through a Cooperation Agreement which is attached hereto as **Exhibit C**, the EDA shall seek funding from the City to reimburse the Developer for its actual expenses related to the specific on-site improvements and the abatement of hazardous materials as set forth in sections 1.2 and 1.3 above. The amount of said reimbursement shall not exceed \$494,000.00 as shown on **Exhibit B**. Reimbursement shall be paid in the following manner: (i) actual cost paid for the abatement of hazardous materials shall be paid within 90 days of the completion of such work; the Developer will be required to provide evidence that the abatement of hazardous materials was completed by a firm licensed and certified in the abatement of hazardous materials; and (ii) actual cost for infrastructure improvements shall be paid upon substantial completion of the Project. Substantial completion shall be considered achieved upon passing the building final inspection. **Exhibit B** is provided as an outline for the estimated infrastructure costs; however, reimbursement for infrastructure improvements shall not be limited to or bound by individual line items called out in **Exhibit B** as unexpected conditions may be encountered and shifting of funds may be required. The Developer has the right to reallocate individual infrastructure line item funds as necessary to complete the site improvements as designed, submitted and approved for rezoning and construction. When requesting each such payment, the Developer shall submit all invoices reflecting the work completed to the EDA Representative. Under no circumstances will the EDA's reimbursements to the Developer exceed \$494,000.00 for the abatement of hazardous materials and the on-site infrastructure improvements for the Project.

1.5 Off-site Infrastructure Improvements. Off-site infrastructure improvements as deemed necessary by the City in its sole and absolute discretion to support the Project shall be completed by the City, subject to funding appropriation by the City Council. The funding obligation is set forth in the Cooperation Agreement. Notwithstanding the foregoing, the burial of overhead electrical/utility lines in front of the Property and the costs associated therewith will be borne by the City through the Cooperation Agreement.

ARTICLE II
PRELIMINARY EDA RESPONSIBILITIES

2.1 EDA Responsibilities. Upon execution and delivery of this Agreement by all parties, the EDA shall undertake the following responsibilities in connection with the Project:

2.1.1 Delivery of Title Documents. The EDA shall provide to the Developer all studies, reports, information and other materials it has in its actual possession relating to the Property, including back title reports, any old surveys and any information relating to environmental conditions on the Property. The Developer acknowledges that the EDA shall not be held responsible for the content of any study, report, information, or other materials provided to the Developer hereunder.

2.1.2 EDA Representative. The EDA appoints the EDA Representative to receive any and all submissions with respect to the Project not governed by the City's site plan or any additional development review processes.

ARTICLE III
THE DEVELOPER'S RESPONSIBILITIES

3.1 The Developer's Responsibilities. Promptly upon the Effective Date the Developer shall undertake the following responsibilities:

3.1.1 Required Submissions. The Developer shall submit to the Director of Community Development, for review and approval, before the commencement of any land-disturbing or construction activity, the following:

- (a) Site Plan and a building plan within six (6) months from the successful completion rezoning of the Property;
- (b) Detailed elevations of all sides of building and any additions and signage to ensure consistency with the goals and objectives outlined in the Master Plan;
- (c) Detailed floor plans;
- (d) Landscape and streetscape plan; and
- (e) Sample building materials for any exterior renovations.

The items listed above, once approved by the Director of Community Development shall be referred to hereafter as the "Plans".

Before any land-disturbing or construction activity commences on the Property, the EDA Representative shall have received a letter from the Director of the Department of Community Development to the effect that the proposed development, as defined by Plans above, is consistent with the Master Plan and this Agreement.

The review and approval of the items listed in this Sub-section is a process which is additional to the City's site-plan and development review process and accordingly, approval by such City employees of such items shall not be deemed to be an acknowledgment or certification by such City employees that such items are in compliance with any Code Requirements.

3.1.2 Omitted.

3.1.3 Zoning & Building Approvals. The Project shall comply with, and the Developer shall obtain such permits, authorizations, variances and approvals from the City as may be required by all applicable Code Requirements. Additionally, the Developer shall obtain all necessary permits, authorizations and approvals from the City to complete the Project. Nothing contained in this Agreement shall be deemed a waiver of any of the City's normal permit and approval process or fees, and the Developer recognizes and agrees that all licenses, permits, consents, inspections and approvals which must be obtained for the development of real estate in the Downtown Area of the City will likewise be required in conjunction with the Project and are not waived by virtue of this Agreement, notwithstanding any provision of this Agreement to the contrary.

3.1.4 Developer Funds. The Developer shall arrange for equity investment and/or debt financing sufficient to cover the costs that the Developer will incur in completing the Project, under terms and conditions acceptable to the Developer. The Developer may terminate the Agreement with written notice to the EDA representative if it is unable to arrange for equity investment and/or debt financing by successful completion of a rezoning of the Property.

3.1.5 Review of Title. Upon receipt of the documents delivered to it by the EDA pursuant to Section 2.1 hereof, and any title commitment ordered by the Developer for the Property (collectively, the "**Title Documents**"), the Developer shall examine such Title Documents and give notice to the EDA prior to the end of the Due Diligence Period, as provided herein, of any tenancies, liens, encumbrances, conditions, restrictions or defects (the "**Title Defects**") affecting title to the Property that are not acceptable to it. Upon the failure of the EDA to eliminate all Title Defects within 60 days after its receipt of notice from the Developer of the same, 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 after the expiration of the EDA's cure period, the Developer may terminate this Agreement by written notice to the EDA. In the event of termination as set forth herein, the parties shall not have any further rights against, or obligations or liability to the other hereunder except as specified in Section 3.1.8.

3.1.6 Hazardous Substances. The Developer shall accept the Property "**as is, where is**", and the EDA 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 Property or removal or cleanup thereof.

3.1.7 Due Diligence Period. Notwithstanding the foregoing section 3.1.6 or the existing Right of Entry Agreement, the Developer is granted 30 days from Effective Date (the "**Due Diligence Period**") (i) to inspect the Property 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 Property are suitable, in the reasonable opinion of the Developer, for the Developer's intended use, and to determine the existence of any adverse environmental matters or conditions in, on, under, about, or migrating from or onto the Property and (ii) to make investigations with regard to matters of survey, title, stormwater, flood plain, utilities availability, building code, and other applicable governmental requirements with regard to the Property and the use thereof. If the Developer determines during the Due Diligence Period that the soils and subsurface conditions of the Property are not suitable for its intended use, that the existence of any adverse environmental matters or conditions in, on, under, about, or migrating from or onto the Property is unacceptable, or that any of its inspections, investigations and the like are unacceptable or unsatisfactory to the Developer, the Developer reserves the right to terminate this Agreement by giving the EDA Representative written notice of termination not later than 5:00 p.m. on the last day of the Due Diligence Period. Upon receipt of such notification, this Agreement shall be terminated, and thereafter, the parties shall not have any further rights against or obligations or liability to the other hereunder except as specified in Section 3.1.8. Failure to notify the EDA's Representative of termination of this Agreement as provided herein constitutes a waiver of the Developer's right to terminate for adverse environmental conditions.

3.1.8 Access. Access shall be at the Developer's sole risk and expense. The EDA shall not be responsible for and the Developer shall indemnify and hold harmless the EDA and its 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 Property 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 Property resulting from such access. The obligations set forth in this Section 3.1.8 shall survive Closing, delivery of the Deed or termination of this Agreement.

ARTICLE IV PURCHASE OF PROPERTY; CONTINGENCIES; REVERTER

4.1 Purchase Price. Upon satisfaction of the terms and conditions of this Agreement, including any contingencies, the EDA shall sell and convey to the Developer and the Developer shall acquire the Property from the EDA. The purchase price for the Property shall be SIX HUNDRED TEN THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$610,500.00) reduced by the Property Conditions Credit as defined herein in the for a total purchase price of \$2.00 (the "**Purchase Price**"); The purchase price set forth in this Section 4.1 reflects the recognition by the EDA of the costs to be incurred by the Developer with respect to the restoration and renovation of the Hampton Armory in the amount of \$610,498.00 to be credited against the purchase price (the "**Property Conditions Credit**"). The Purchase Price shall be paid in lawful money of the United States of America by check at Closing.

4.2 The Closing. The closing ("**Closing**") of the Property shall take place within 45 days after the successful completion of the rezoning of the Property, the resolution any Title

Defects, and the securing of funding by the EDA to reimburse the Developer for the costs of certain on-site infrastructure improvements and hazardous material removal, whichever occurs last (the “Closing Date”). Provided, however, if the EDA does not obtain funding to reimburse the Developer for the costs of certain on-site infrastructure improvements and hazardous materials removal as set forth in Section 1.4 within 120 days of the successful completion of the rezoning of the Property, the Developer may terminate this Agreement. The Closing shall take place at the Office of the City Attorney, 22 Lincoln Street, Hampton, Virginia. At Closing, the EDA shall deliver to the Developer a good and sufficient deed (the “Deed”) with Special Warranty of Title. The Developer shall be responsible for the following closing costs: (i) fees and grantee taxes for recording the Deed in the Clerk’s Office, (ii) title insurance premiums, (iii) financing costs, and (iv) its own attorney’s fees and other expenses. The EDA shall be responsible for any delinquent or deferred real estate taxes and stormwater utility fees and its own attorney’s fees and other expenses. The EDA is exempt from grantors taxes on the Deed. Any real estate property taxes and stormwater utility fees shall be prorated as of the Closing Date. The Developer acknowledges that except as to special warranty of title, the Property will be sold to the Developer “AS IS, WHERE IS, WITH ALL FAULTS” without any representations or warranties from the EDA, either expressed or implied.

4.3 Omitted.

4.4 Zoning/Financing Contingencies. Closing hereunder is expressly contingent upon a satisfactory completion of the rezoning of the Property to allow the proposed uses for the contemplated Project. Within 60 days from the Effective Date, the Developer shall submit an application to the City for a rezoning of the Property. The EDA will execute the application for the rezoning of the Property as the owner of the Property. At its sole cost and expense, the Developer will work with the City’s Planning Division of the Department of Community Development to rezone the Property in a manner that will allow the uses and facilities contemplated by the Developer’s operations and support services and other related and/or accessory uses, including the issuance of any use permit(s), variances or other permits/approvals (the “Rezoning”). As part of the rezoning process, the City’s Planning Division shall subject the Property to certain development criteria. Specifically, the City’s Planning Division recommends limiting uses on the Property to (i) micro-brewery; (ii) craft brewery; (iii) micro distillery; (iv) craft distillery; (v) restaurant; (vi) brewpub; (viii) live entertainment; (ix) office; (x) retail; (xi) any mix of the aforementioned uses; Accordingly, the design of the Project site, the building architecture of any additions and materials shall meet criteria and development standards as more particularly set forth in those proffers filed with the Rezoning (collectively “Proffers”).

Nothing contained herein shall be interpreted or construed as a representation, assurance or other promise that the Project can be successfully rezoned, all parties acknowledging that final approval of the rezoning of the Project is ultimately controlled by the City Council for the City and that the decision may be appealed to the Circuit Court of the City of Hampton, Virginia. If the Rezoning is not accomplished within six (6) months from the date of an appeal to the Circuit Court, the Developer may terminate this Agreement by giving written notice to the EDA no later than six (6) months from the date of appeal to the Circuit Court. Upon such notification this Agreement shall be terminated, and thereafter, the parties shall not have any further rights against, or obligations or liability to the other hereunder except as specified in Section 3.1.8. NOTHING IN THIS AGREEMENT OR ANY OTHER DEFINITIVE AGREEMENT

BETWEEN THE EDA AND THE DEVELOPER SHALL CONSTITUTE OR BE DEEMED TO BE AN AGREEMENT BY THE CITY OF HAMPTON TO REZONE THE PROJECT PROPERTY.

4.5 Reverter. In the event the Developer fails to obtain a building permit to commence renovations of the Hampton Armory within 12 months after successful completion of a rezoning of the Property, subject to the force majeure provisions of Section 12.11, the EDA shall have the right to repurchase the Property at the original purchase price of \$2.00, whereupon the Developer shall forthwith convey the Property back to the EDA by Special Warranty deed free and clear of liens and encumbrances other than (i) those encumbering the Property at the time conveyed by the EDA to the Developer, (ii) those contained in the deed from the EDA to the Developer or (iii) those otherwise created or approved by the EDA. Settlement shall take place in the Office of the City Attorney within 30 days after the EDA's written notice to the Developer to repurchase the Property. In the event the Developer for any reason fails or refuses to convey title back to the EDA as required herein, then, the EDA shall have the right to enter upon and take possession of said Property, along with all rights and causes of action necessary to have title to the Property conveyed back to the EDA. In the event the EDA exercises its option to repurchase the Property as set forth under the reverter provision of Section 4.5, and the Property is encumbered by a mortgage, under no circumstances shall the EDA be held liable with respect any remaining mortgage balance or deficiency. It is understood and agreed that the EDA will exercise a good faith effort to proceed with the review and approval processes in a reasonable and timely manner so as not to delay the construction of the Project; provided, however, that the Developer must respond to review comments in a timely fashion so as not to unduly delay the review process. Any "bad faith" delay caused by the EDA shall not trigger this reverter. Notwithstanding the foregoing, the EDA will agree to release the reverter, at the sole cost and expense of the Developer, upon evidence of the issuance of the building permit to commence renovations of the Hampton Armory within 12 months after successful completion of a rezoning of the Property, subject to the force majeure provisions of Section 12.11. This provision shall survive Closing and delivery of the Deed.

ARTICLE V
PROJECT DEVELOPMENT

5.1 Construction of the Project. Upon completion by the Developer of the activities and responsibilities, the resolution of any Title Defects, the fulfillment of the Rezoning, and Closing all as set forth in Articles III and IV hereof, the Developer shall commence, or cause others to commence construction of the Project. Notwithstanding the foregoing, a site plan and a building plan for review and approval must be submitted to the City within six (6) months from the successful completion of the rezoning of the Property. Subject to the force majeure provisions of Section 12.11, the Developer shall thereafter diligently pursue construction of the Project in accordance with the terms and conditions set forth herein, and shall obtain its building permit to commence renovation of the Hampton Armory within 12 months from the successful completion of a rezoning of the Property. Failure to submit the site plan and building plan and to obtain the building permit as set forth herein shall constitute a default and an Event of Termination and shall subject the Property to the reverter provision of Section 4.5 above. Additionally, Developer shall obtain a Certificate of Occupancy and be open for business within

18 months from the issuance of the building permit for the Project, subject to the force majeure provisions of Section 12.11.

5.2 Construction Issues.

5.2.1 The Project shall be constructed in full compliance with all applicable federal, state and local laws, rules and regulations and that 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 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.

5.2.2 During construction of the Project, the Developer shall keep the Property clean and in good order, free of trash and construction debris. If the Developer fails to do so, the EDA 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 EDA may clean the Property and charge the Developer for all its costs and expenses incurred therein.

5.3 Inspections. During construction of the Project, members of the City's Office of Building Inspection 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 Code Requirements and regulations, approved plans and specifications, and compliance with the Developer's obligations under this Agreement.

5.4 Survival. The provisions of this Article V shall be continuing obligations of the developer and shall survive Closing and delivery of the Deed.

**ARTICLE VI
EVENTS OF TERMINATION**

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

6.1.1 Breach of any material covenant, obligation or requirement of the Developer arising under this Agreement, the Deed, including an Event of Termination in this Section 6.1, and the continuation of such breach for 30 days after receipt of written notice from the EDA specifying the nature and extent of such breach, or if such breach cannot reasonably be cured within such 30 day period, the failure of the Developer to commence to cure such breach within such 30 day period and to diligently pursue same to completion.

6.1.2 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.

6.1.3 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.

6.1.4 The failure of the Developer to obtain the building permit to commence renovations of the Hampton Armory within 12 months from the successful completion of a rezoning of the Property, subject to force majeure.

6.1.5 The failure of the Developer to obtain a Certificate of Occupancy and be open for business within 18 months from the issuance of the building permit for the Project, subject to force majeure.

6.2 Events of Termination by the EDA. Each of the following shall constitute an Event of Termination by the EDA:

6.2.1 The failure of the EDA to perform or to observe any covenant, obligation or requirement of this Agreement not specifically named as an Event of Termination in this Section 6.2, and the continuation of such failure for 30 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 30 day period, the failure of either (i) to commence to cure such default within such 30 day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such Event of Termination within a reasonable time after the expiration of the first 30 day period, and to diligently pursue the same to completion.

6.3 EDA Remedies.

6.3.1 Should an Event of Termination as outlined in 6.1.1 through 6.1.5 by the Developer occur hereunder, the EDA may, by written notice to the Developer, terminate this Agreement, and, in addition, may exercise any remedies available to it at law or in equity, except that the Developer shall not be liable to the EDA 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 EDA after execution of this Agreement. All remedies provided to the EDA under this Agreement shall be cumulative and not restrictive of other remedies, including, without limitation, specific performance or the EDA's exercise of the reverter as specified in Section 4.5 above,

6.4 The Developer's Remedies. Should an Event of Termination by the EDA occur hereunder, the Developer may seek specific performance, or by written notice to the EDA, terminate this Agreement, upon which termination the Developer may exercise any remedies available to it at law or in equity, except that the EDA 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.

ARTICLE VII INSURANCE

7.1 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) for any single occurrence along with an umbrella general liability policy of not less than Five Million Dollars (\$5,000,000). 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 Section 7.1, 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 Section 7.1 is separate and specific to the Project.

7.2 Policy Requirements. The following general requirements shall apply to all insurance coverage carried by the Developer pursuant to Section 7.1:

7.2.1 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.

7.2.2 Certificates of Insurance. The Developer shall deliver to the EDA policies or certificates of insurance evidencing such coverage before the commencement of construction.

7.2.3 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 EDA.

7.2.4 Non-Cancelable Without Notice. The coverages shall be non-cancelable unless the carrier gives to the EDA 30 day's prior written notice of cancellation.

7.3 Environmental Considerations. 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 clean up activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the EDA, 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, or any noncompliance 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 Section 3.1.7 or from the Closing Date, shall be paid by the Developer. This Subsection shall survive the termination or expiration of this Agreement and Closing on the Property.

7.4 Workers' Compensation Insurance.

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

ARTICLE VIII
EQUAL OPPORTUNITY EMPLOYER/PROHIBITION AGAINST EMPLOYMENT OF
UNAUTHORIZED ALIENS

8.1 Equal Opportunity Employer. The Developer 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 its best efforts to recruit well-qualified minorities for its work force, and the Developer's representatives will meet with representatives of the City from time to time to identify appropriate techniques for such recruitment. 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 VIII to their respective personnel.

8.2 Mandatory Contract Provisions.

8.2.1 The Developer agrees to insert the following requirements in all bid documents, contracts and purchase orders of over \$10,000 pertaining to this Agreement, and to require all contractors to include such requirements in its subcontracts over \$10,000:

(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 Section 8.2.1(a) 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 Section 8.2.1;

(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 IX REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

In order to induce the EDA to enter into this Agreement, the Developer represents and warrants to the EDA as follows:

9.1 The Developer is a duly organized and validly existing limited liability company 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.

9.2 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.

9.3 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 organizational articles 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.

9.4 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 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.

9.5 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 (a) under any obligation for borrowed money, or (b) 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.

9.6 To the Developer's best knowledge, neither this Agreement nor any document, certificate or financial statement furnished to the EDA 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 EDA or on behalf of the Developer in connection with the transactions contemplated hereby.

ARTICLE X REPRESENTATIONS AND WARRANTIES OF THE EDA

In order to induce the Developer to enter into this Agreement, the EDA represents and warrants to the Developer as follows:

10.1 The EDA is a political subdivision of the Commonwealth of Virginia possessing the full legal right, power, and authority to enter into and perform its obligations under this Agreement.

10.2 The EDA 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 EDA in connection with its obligations hereunder. The execution, delivery and performance by the EDA of this Agreement has been duly authorized by all requisite action by the EDA, and this Agreement is a valid and binding obligation of the EDA enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

ARTICLE XI [OMITTED IN ITS ENTIRETY]

**ARTICLE XII
MISCELLANEOUS**

12.1 Assignment.

12.1.1 This Agreement is binding upon and shall inure to the benefit of the EDA, the Developer and their respective successors and assigns.

12.1.2 The Developer may not assign its interest or any part thereof in this Agreement without the prior written approval of the EDA, 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 504-520 N King St, LLC is a general partner or the owner of at least 51% of the capital stock, partnership interest or membership interest, or if such entity has common ownership with the Developer provided that no such assignment shall relieve the Developer of any liability hereunder.

12.2 Consents and Approvals. 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 the Developer acknowledges that this covenant does not apply to permits required from the City in connection with the Project.

12.3 Omitted.

12.4 Omitted.

12.5 Entire Agreement. This Agreement incorporates all prior negotiations and discussions between the parties regarding its subject matter and represents the entire agreement of the EDA and the Developer for the Project. This Agreement may only be modified by written instrument executed by the EDA and the Developer.

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

12.7 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: 504-520 N King St, LLC
 Attention: John R. Thomas, Managing Member
 768 W. 20th Street
 Norfolk, VA 23517

and a copy to: need legal counsel if applicable

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

and a copy to: City of Hampton
Attention: City Attorney
22 Lincoln 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. Either party may change its 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.

12.8 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.

12.9 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.

12.10 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.

12.11 Force Majeure. For the purpose of any of the provisions of this Agreement, neither the EDA, 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 Section 12.11 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.

12.12 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 EDA and the Developer or as constituting the Developer as the agent or representative of the EDA for any purpose or in any manner under this Agreement, it being understood that the Developer is an independent contractor hereunder.

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

12.14 Ancillary Documents. The Chair or Vice-Chair of the EDA is hereby authorized, on behalf of the EDA, to execute any and all other documents necessary or appropriate to effectuate the transactions contemplated by this Agreement, 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 without additional formal approval of the EDA.

12.15 Broker. The EDA and the Developer each represent and warrant for itself 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 from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this warranty.

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

12.17 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.

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

12.19 Conflict of Terms. It is the intention of the EDA 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.

12.20 No Waiver. No failure on the part of the EDA 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.

12.21 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.

12.22 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.

12.23 Omitted.

12.24 Sovereign Immunity. Nothing contained in this Agreement shall be deemed to be, or have the effect of being, a waiver by the EDA 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:

[SIGNATURE ON FOLLOWING PAGES]

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON

By: _____
Chair/Vice-Chair

Approved as to Content:

Dept. of Economic Development

Approved as to Form & Legal Sufficiency:

City Attorney (Counsel to EDA)

504-520 N KING ST, LLC

By: _____
John R. Thomas, Managing Member

Exhibit A
(The "Property")
Attached

Exhibit B

(Reimbursement Schedule of On-Site Infrastructure Costs
and removal of Hazardous Materials)

Exhibit C

(Cooperation Agreement Between the City of Hampton and the EDA)

Attached