

Prepared by/after recording return to:

Bonnie N. Brown (VSB #83690)
Hampton City Attorney's Office
22 Lincoln Street
Hampton, Virginia 23669
757-727-6127

Consideration: \$ 0.00
LRSNs: 1004270

This Agreement Is Exempt from Clerk's Fees Pursuant To Sections 58.1-811(A)(3), 58.1-811(C)(4), 17.2-266 and 17.1-279(E) of the Code of Virginia

VACATION AGREEMENT

THIS VACATION AGREEMENT (the "Agreement") made this _____ day of _____, _____, by and between **PHENIX INDUSTRIAL, LLC**, a Virginia limited liability company with a principal place of business at 11864 Canon Blvd, Suite 103, Newport News, Virginia 23606 ("Phenix"); **NP HAMPTON COMMERCE CENTER, LLC**, a Missouri limited liability company qualified to do business in Virginia with a principal place of business at 3315 N. Oak Trafficway, Kansas City, MO 64116 ("NP Hampton"); and the **CITY OF HAMPTON**, Virginia, a municipal corporation of the Commonwealth of Virginia with an address of 22 Lincoln Street, Hampton Virginia 23669 (the "City"), collectively the "Parties."

RECITALS

- A. NP Hampton is the contract purchaser of and will become the owner of certain parcels of property located in the City of Hampton known as 750 Shell Road (LRSN 13004501) and 700 Shell Road (LRSN 1004270).
- B. The Economic Development Authority of the City of Hampton, Virginia is the current owner of 750 Shell Road (LRSN 13004501) (the "EDA Property").

- C. Phenix is the current owner of 700 Shell Road (LRSN 1004270) (“the Phenix Property”).
- D. A 1.65+/- acre, 71,960+/- square foot portion of a 60’ public right-of-way known as Pine Avenue is located between the Phenix Property and Aberdeen Road City-owned right-of-way, as depicted on the attached plat entitled, “Plat Showing a Portion of Aberdeen Road/Pine Avenue To be Vacated,” prepared by Randal J. Edwards, L.S., City Surveyor, last revised and dated September 30, 2022 (the “Pine Avenue Vacation Area”) which is attached hereto as **EXHIBIT A**.
- E. NP Hampton and the EDA are parties to a development agreement which, in part, contemplates partial closure and re-use of the Pine Avenue Vacation Area (the “Development Agreement”).
- F. Transfer of the Pine Avenue Vacation Area to NP Hampton is necessary to facilitate the Development Agreement, and accordingly, the Parties desire to enter into this Agreement setting forth the terms upon which the Parties agree to vacate the Pine Avenue Vacation Area pursuant to Section 2.05 of the Hampton City Charter.
- I. The City, acting by and through its City Council, is of the opinion that the Pine Avenue Vacation Area is not now and will not be needed for public right-of-way, and all property interests affected by this Agreement are consistent with the best interests of the citizens of the City of Hampton.

NOW, THEREFORE, in accordance with Section 2.05 of the Hampton City Charter, the City of Hampton, Virginia, acting by and through its City Council at its duly held meeting on the _____ day of _____, _____, in agreement with NP Hampton, hereby

releases, quitclaims and approves the vacation of the following described public right-of-way unto NP Hampton, to-wit:

PINE AVENUE VACATION AREA:

All that certain lot, piece, or parcel of land containing 71,960 square feet (1.6520 acres), more or less, situate, lying, and being in the City of Hampton, Virginia, and being described as “CITY RESERVE PARCEL TO BE VACATED,” as shown in the area hatched on that certain plat entitled: “PLAT SHOWING A PORTION OF ABERDEEN ROAD/PINE AVENUE TO BE VACATED HAMPTON, VA,” said plat bearing a date of March 30, 2020, last revised September 30, 2022, which is attached hereto as Exhibit “A” for reference and made a part of this legal description.

The conveyance is made subject to all easements of record.

PROVIDED, however, that such release, quitclaim and vacation shall be conditioned, without further need for action, upon the following:

1. Recording of this Agreement and the vacation of the Pine Avenue Vacation Area is expressly contingent upon NP Hampton’s acquisition of the Phenix Property, unencumbered by any lien or other impediment that might limit or qualify NP Hampton’s right, title, or interest in the Phenix Property, or hinder NP Hampton’s ability to proceed with the Development Agreement.

2. NP Hampton shall dedicate to the City, in fee simple and at no cost to the City, a 0.32 acre+/- portion of the Phenix Property to be used as public right-of-way in order to facilitate construction of a cul-de-sac of the southern portion of Pine Avenue as further described in the Development Agreement, and as depicted on **EXHIBIT B**. The exact dimensions and acreage of said dedication shall be determined as part of the City’s site plan regulatory process, shall be depicted on the site plan, and shall be subject to the approval of the City’s Director of Public Works.

3. As part of the Development Agreement and proffer agreement approved and recorded in connection with the rezoning of the EDA Property and Phenix Property [Instrument Number [XXXXXX], NP Hampton agreed to construct and maintain a 10' +/- wide shared-use path within the Pine Avenue Vacation Area. NP Hampton shall dedicate to the City, at no cost to the City, a permanent, non-exclusive public access and maintenance easement for the 10' +/- wide shared-use path within the Pine Avenue Vacation Area. The exact dimensions of the shared-use path and easement shall be determined as part of the City's site plan regulatory process, shall be depicted on the site plan, and shall be subject to the approval of the City's Director of Public Works. The easement dedicated to the City shall be of sufficient dimensions to cover the entirety of the shared-use path and any appurtenant features of the shared-use path.

4. NP Hampton shall dedicate to the City, at no cost to the City, any sanitary sewer or other similar utility easements within the Pine Avenue Vacation Area that are deemed necessary in the sole discretion of the City.

IN WITNESS WHEREOF, the City of Hampton, Virginia, a municipal corporation, has caused its name to be signed hereto by its City Manager or designee and its corporate seal to be affixed and attested by its Clerk, Katherine Glass, they having been duly authorized to do so.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

CITY OF HAMPTON, VIRGINIA

By: _____
Mary B. Bunting or designee

STATE OF VIRGINIA
City of Hampton, to-wit:

The foregoing instrument dated the _____ day of _____, _____, was
acknowledged before me this _____ day of _____, _____, by the City
Manager or her designee, _____ who is personally known to me.

Given under my hand this _____ day of _____, _____.

Notary Public
My commission expires: _____
Registration No.: _____

ATTEST:

Katherine K. Glass, Clerk of Council

STATE OF VIRGINIA
City of Hampton, to-wit:

The foregoing instrument dated the _____ day of _____, _____, was
acknowledged before me this _____ day of _____, _____, by Katherine K.
Glass, Clerk of Council for the City of Hampton, Virginia, who is personally known to me.

Given under my hand this _____ day of _____, _____.

Notary Public
My commission expires: _____
Registration No.: _____

PHENIX INDUSTRIAL, LLC:

By: _____

STATE OF VIRGINIA
City of Hampton, to-wit:

The foregoing instrument dated the _____ day of _____, _____, was
acknowledged before me this _____ day of _____, _____,
by _____, _____ who is personally known to me.

Given under my hand this _____ day of _____, _____.

Notary Public
My commission expires: _____
Registration No.: _____

NP HAMPTON COMMERCE CENTER, LLC
A Missouri limited liability company authorized to
transact business in Virginia

By: NorthPoint Holdings, LLC
A Missouri limited liability company,
Managing Member

By: _____
Nathaniel Hagedorn, Manager

Date: _____

STATE OF VIRGINIA
City of Hampton, to-wit:

The foregoing instrument dated the _____ day of _____, _____, was
acknowledged before me this _____ day of _____, _____,
by _____, _____ who is personally known to me.

Given under my hand this _____ day of _____, _____.

Notary Public
My commission expires: _____
Registration No.: _____

EXHIBIT A – RIGHT OF WAY VACATION PLAT

EXHIBIT B – LAND DEDICATION EXHIBIT