

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (the "Agreement") effective as of the ____ day of September, 2018, by and between the Economic Development Authority of the City of Hampton, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), and the City of Hampton, a municipal corporation of the Commonwealth of Virginia (the "City").

RECITALS:

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 and 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 Authority proposes to further Council's priorities through the acquisition of those certain parcels of property located in the City of Hampton Virginia (the "City"), identified as parcels 7001258, 13002076, and 13002078, and more commonly referred to as 1809 W. Mercury Boulevard and 1929 Coliseum Drive, Hampton, Virginia (the "Property");

WHEREAS, negotiations between the Authority and the seller of the Property have culminated in an "Agreement for Sale and Purchase of Property" (the "Purchase Agreement") a copy of which is attached to this Cooperation Agreement;

WHEREAS, the Property includes approximately 11 commercial rental suites, currently subject to lease agreements extending into calendar year 2019, as well as rented roof space to a cellular provider (the "Commercial Rentals"), each of which are subject to agreements, whether written or oral, that will be assigned to the Authority ("Commercial Rental Leases");

WHEREAS, the Authority, upon becoming the legal owner of the Property, will be the recipient of certain rents related to the Commercial Rental Leases and incur certain financial obligations, including, but not limited to, insurance premiums, and certain other costs related to the continued lease of certain portions of the Property, as well as the ultimate disposition of the Property; and

WHEREAS, the City is willing to fund the Authority's purchase of the Property pursuant to the Purchase Agreement and the ongoing financial obligations of the Authority related to the ownership of the Property on the condition that the Authority pay to the City all rents received from the Commercial Rentals, subject to those certain terms and conditions more fully set forth below.

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

1. Recitals. The recitals to this Agreement are incorporated as a substantive part of this Agreement, and the parties hereby acknowledge the accuracy of such Recitals.

2. City to Provide Funds to the Authority. 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 grant to the Authority sufficient funds to perform and administer its obligations under the Purchase Agreement and the assignment of the Commercial Rental Leases. Specifically, the City agrees, subject to the terms set forth in Section 6 below, to deliver to the Authority sufficient funds for the Authority to make timely payment or otherwise provide for any obligations arising as the owner and lessor of the Property.

3. Obligations of the Authority. The Authority shall faithfully perform or cause to be performed its obligations under the Purchase Agreement and the Commercial Rental Leases assumed thereto and shall fully enforce its rights thereunder.

4. Obligations of the Parties Pertaining to Rents, Security Deposits, and other Responsibilities of the Authority as the Property Owner.

(a) The Authority shall receive and retain all rents received pursuant to the Commercial Rental Leases ("Rent"). The Authority shall not be liable to the City or otherwise responsible for Rent, except to the extent Rent is paid to and received by the Authority pursuant to those Commercial Rental Leases. The Authority shall have sole discretion to impose or waive any and all late charges and/or interest assessable on any balances due.

(b) The Authority shall receive and retain all security deposits related to the Commercial Rental Leases, to be held, retained, and disbursed by the Authority, subject to the terms of those Commercial Rental Leases.

(c) The Authority shall segregate all Rent received and all security deposits received ("Authority Retained Funds") from all other funds held by the Authority; and shall use all Authority Retained Funds solely for the purposes of carrying out its responsibilities under the Purchase Agreement, Commercial Rental Leases, and as may otherwise be incurred by the Authority as the owner of the Property, including, but not limited to, the costs for securing and demolishing the improvements on the Property. Upon the Authority's disposition or demolition of the Property, any balance of Authority Retained Funds then remaining shall be paid to the City.

(d) To the extent Authority Retained Funds are insufficient, the City shall pay or otherwise provide for all obligations of the Authority with respect to undertaking and carrying out the responsibilities of the Authority under the Purchase Agreement, Commercial Rental Leases, and as may otherwise be incurred by the Authority as the owner of the Property, including, but not limited to, the costs for securing and demolishing the improvements on the Property. In addition, the City shall be entitled to conduct inspections of the Property at any time, and, shall in its discretion, and upon

consultation with the Authority determine necessary repairs, protective measures, and replacements and establish a schedule therefore.

5. Limited Liability of the Authority. It is the intent of the parties that this Cooperation Agreement will not impose upon the Authority any responsibility other than that required of the Authority as the owner of the Property, including, but not limited to, the responsibility to charge and collect rent. Accordingly, the Authority does not assume by these presence any responsibility or liability whatsoever except as specifically stated herein. Should any liability accrue to the Authority by reason of this Cooperation Agreement which is not specifically addressed in this Cooperation Agreement, the Authority 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 hereby pledges to the Authority, to the extent Authority Retained Funds are insufficient and subject to appropriation by the City Council and the other limitations set forth in this Section, to deliver to the Authority sufficient funds or to otherwise provide for as and when required for the Authority to meet its obligations under the Purchase Agreement and the Commercial Rental Leases, and as otherwise incurred by the Authority as the owner of the Property, including, but not limited to the costs for securing and demolishing the improvements on the Property. 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 Purchase Agreement, the Commercial Rental Leases, or for the payment of money.

(b) Money appropriated by Council for payment thereof shall be paid to the Authority, and shall be applied solely to the payment obligations to be paid by the Authority pursuant to the Purchase Agreement, Commercial Rental Leases, or as otherwise incurred by the Authority as the owner of the Property for which such appropriation was made ("Requested Amount"), and shall be used by the Authority for no other purpose.

(c) In the event that the amount actually needed to pay the full amount of any the required obligation exceeds the Requested Amount, the City Manager may submit a supplemental request to the Council for the amount needed to satisfy such a deficit or take such other measures as appropriate to satisfy any deficit.

(d) The Council hereby undertakes a non-binding obligation to appropriate to the Authority such amounts as may be requested for time to time pursuant to this Section and elsewhere in this Cooperation 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 hereby recommends that future Councils do likewise.

(e) Nothing in this Cooperation Agreement is or shall be deemed to be a lending of the credit of the City to the Authority or to any other person, and nothing in this Cooperation 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 Cooperation 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 Cooperation 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 obligation to provide funding for the purchase and lease of the Property as stated in the Purchase Agreement and Commercial Rental Leases is held invalid by a court of competent jurisdiction, this Cooperation Agreement will terminate and the Authority may take whatever steps it deems necessary or appropriate to minimize its actual or perceived liability in connection with the Purchase Agreement and/or the Commercial Rental Leases.

8. Notices. All notices, certificates, requests or other communications under this Cooperation 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 Authority:

Economic Development Authority of the City of Hampton, Virginia
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 Cooperation 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 Cooperation Agreement will be governed by the laws of the Commonwealth of Virginia, and may be amended only by written agreement of the parties. This Cooperation 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 Cooperation 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. This Cooperation 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 Cooperation 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.

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON, VIRGINIA

By: _____
Chair/Vice-Chair

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager/Authorized Designee

Approved as to form and
legal sufficiency:

Senior Deputy City Attorney