

## **ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement (“Agreement”) is entered into effective as of \_\_, 2021, by and between Tabb Street Development (the “Company”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF PETERSBURG, VIRGINIA**, a Virginia political subdivision (the “Authority”), to describe the agreement between the parties about the Authority’s economic development incentives to assist the Company in development of property with common street address of 20 West Tabb Street, in the City of Petersburg, Virginia (the “City”).

**WHEREAS**, the City is authorized pursuant to Section 15.2-953 of the *Code of Virginia* of 1950, as amended (the “Virginia Code”), to make donations and appropriations of money to the Authority for the purposes of promoting economic development, and the Authority is authorized pursuant to Section 15.2-4905(12) and (13) of the Virginia Code, to accept such contributions, grants and other financial assistance from the City, and to make grants to any person, partnership, association, corporation, business or governmental entity for the purposes of promoting economic development; and

**WHEREAS**, the Authority is vitally interested in the economic welfare of City citizens and the creation and maintenance of sustainable jobs, and it wishes to stimulate investment in the City to provide economic growth and development opportunities; and

**WHEREAS**, the Company intends to develop the Site (as hereinafter defined) as a hotel (the “Hotel”); and

**WHEREAS**, the development of the Site will benefit the City through the generation of additional tax revenues and the creation of new employment opportunities, as well as remove blight and generate additional foot traffic and spending in the historic commercial district, and the Authority has offered economic development incentives to induce the Company to develop the Site as provided in this Agreement; and,

**WHEREAS**, the Company will cause the investment of an amount estimated to be approximately \$16 million through its development of the Site, and the Company estimates that the total Tax Revenues, to include Food, Beverage, and Lodging taxes, Real Property taxes, , Stormwater taxes, Utility taxes, State Sales taxes (1%), Business Personal Property taxes, State Sales Tax Schools (1%), Business License tax, and other fees and assessments, from the Site in the 11 years following completion of the Project (as hereinafter defined) will be approximately \$5.2 million.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

I. **DEFINITIONS**. The following terms shall be defined as follows:

“**Bank**” means the Company’s lender providing financing for the Project, its successors or affiliates. Upon selection and closing of the financing with the Bank, the Company shall provide written notice to the Authority of such selected Bank.

“**Construction**” means the restoration and renovation of the existing six-story structure located on the site with improvements to the appurtenances thereto.

“**Director**” means the Director of Finance for the City.

“**First Full Taxable Year**” means, at the election of the Company, either the first full tax year (January 1 – December 31) following the year during which the Project was completed or the full tax year during which the Project is completed. The parties anticipate completion of the Project in 2023; if so, the First Full Taxable Year will be either 2023 or 2024 at the election of the Company. In no event may the First Full Taxable Year be later than 2025.

“**Gap Financing**” means the amount of financing required by the Company to supplement other financial resources necessary to complete the construction of the Hotel. This amount is hereby established at a principal amount of Two Million dollars (\$2,000,000.00) and interest on the unpaid balance as determined at closing.

“**Grant**” or “**Grants**” means the economic development incentive grants provided by the Authority from time to time hereunder and consisting solely of the amount of the Tax Revenue to be paid to the Company pursuant to the terms of this Agreement.

“**Payment Period**” means the First Full Taxable Year and the nine succeeding tax years.

“**Project**” means the development of the Site, 20 West Tabb Street all as approved by the City and described in Exhibit A.

“**Site**” means the real property presently designated by the City as Parcel ID No. 011 250002 as depicted in Exhibit A, or as the boundaries of such parcel may hereafter be adjusted via duly approved plat recorded in the land records of the City.

“**Tax Period**” means the six-month period for which Tax Revenues will be computed for a Grant payment. See Exhibit B.

“**FB&L Tax Revenue**” means the sum taxes on transient lodgers and the taxes on purchases of meals as prescribed by sections 106-261, *et seq.* and 106-291, *et seq.* of the **Code of the City of Petersburg**, as amended, respectively, generated at the Site and paid to the City, directly or indirectly, in a Tax Period for which the Company is entitled to a Grant hereunder. The Director will determine the amount of Tax Revenue using the best available information, which may include confidential information that cannot be disclosed without taxpayer consent.

“**Total Project Cost**” means the actual cost of design, engineering, and construction of the Hotel, as certified by the Company to the Authority and verified by the Authority and the Director pursuant to Section II(D) of this Agreement.

II. **CONSTRUCTION OF PROJECT**. In return for the Grants to be provided by the Authority under this Agreement, the Company agrees as follows:

- A. The Company will construct and obtain a certificate of occupancy for the Project by January 1, 2024. The Company’s estimated cost of construction of the Hotel, including engineering and design, is \$16 million.

- B. The Company will create and maintain a minimum of Sixty (60) Full Time Equivalent (FTE) positions.
- C. The Project will develop a full service hotel with:
- Up to 64 guest rooms, including a mix of Suites, doubles, singles. The beds are a mix of king and queen sizes. I have a breakdown of roomtypes, attached.
  - 1<sup>st</sup> Floor Banquet area – 858 s.f. 58 occupants with tables/chairs;
  - 1<sup>st</sup> Floor Casual Dining/Bar: 676 s.f. 38 occupants.
  - 1<sup>st</sup> Floor Main Dining: 1,542 s.f. 103 occupants.
  - 1<sup>st</sup> Floor Outdoor Dining Terrace: 931 s.f. 62 occupants.
  - 2<sup>nd</sup> Floor Conference: 320 s.f. 22 occupants
  - Basement Conference: 740 s.f. 49 occupants
  - Basement Bar/Game Room/Lounge/event space: 1,008 s.f. 63 occupants
  - Basement Barber shop: 340 s.f.
  - Rooftop Bar: 735 s.f. 49 occupants
- D. The Company, to the fullest extent allowable by controlling law, agrees to include in its agreement with its general contractor terms that require the contractor and its sub-contractors to make good-faith efforts to employ qualified individuals who are residents of the City of Petersburg, Virginia, in sufficient numbers so that no less than thirty percent of the contractor’s total construction work force, including any subcontractor’s work force, measured in labor work hours, is comprised of such Petersburg residents. To verify compliance with this requirement, Company shall keep written records indicating the number and percentages of Petersburg residents so employed and shall provide copies of such records to the EDA.
- E. During the term of this agreement, Company, to the fullest extent allowable by controlling law, agrees to make a good-faith effort to hire as employees of the Hotel qualified individuals who are residents of the City of Petersburg, Virginia, in sufficient numbers so that no less than forty percent of the Hotel work force, measured in labor work hours, is comprised of such Petersburg residents. To verify compliance with this requirement, Company shall keep written records indicating the number and percentages of Petersburg residents so employed and shall provide copies of such records to the EDA.
- F. After obtaining a certificate of occupancy for the Project, the Company will provide reasonably detailed information to the Authority to document its actual costs of designing, engineering, and constructing the Hotel.

III. **PAYMENT OF GRANTS.** The Authority will pay Grants to the Company as follows:

- A. The Company may submit a written request for a Grant immediately after the end of each Tax Period as shown on Exhibit B. The calendar year in which the Company submits its first request shall constitute the Company’s election of the First Full Taxable Year. For example, if the Company submits its first request for a Grant in July 2024 for the January – June 2024 Tax Period, then the First Full Taxable Year

of the ten-year Payment Period would be 2024. In no event may the First Full Taxable Year be later than 2025. The Company shall provide a completed W-9 form to the Authority with its first written request for a Grant.

- B. The Director shall determine the Tax Revenue for each Tax Period.
- C. During each year of the Payment Period, the Authority shall provide a Grant in the amount **FIFTY PERCENT (50%)** of the FB&L Tax Revenue for the relevant Tax Period in March and September as shown in Exhibit B. The Grant amounts will vary based on the amount of **50%** of the FB&L Tax Revenue as defined in **Section I** herein generated during the corresponding Tax Period.
- D. The Authority will provide a Grant for each Tax Period until the Authority has paid to the Company's Bank of behalf of the Company Grants that equal the lesser of: (i) an aggregate maximum of the Gap Financing, or (ii) **50%** of the Tax Revenue generated during the Payment Period. However, the Authority will not pay Grants after the end of the Payment Period, for Tax Periods ending after 2035, or for any Tax Period in which there is no Tax Revenue; provided, however, that if the City fails to appropriate funds to the Authority for the purpose of making Grant payments hereunder, the Payment Period shall be extended for as long as the City's failure to make such appropriation continues. The Company shall pay the Bank any requirements of the debt service, including principal and interest, not covered by the Grant payments. Such debt may be secured further by the Bank in such manner that is agreed upon between the Bank and the Company.
- E. In the event that the Authority receives from a third party or parties a grant or grants in an amount of all or a portion of the Gap Financing, the purpose of such grant or grants which is to provide the Gap Financing for the Project, the Authority shall lend such amount to the Company and shall stand in place of the Bank for that amount. The Authority shall retain the payments from the City appropriations as specified herein and any deficits in debt service from the Company for use by the Authority for other activities of the Authority. Loan terms and conditions shall be documented by the parties at closing.

IV. **INDEMNIFICATION**. The Company will defend, indemnify, and hold harmless the Authority and the City, and their officers and employees (the "Indemnified Parties"), from any claims of third parties arising out of any act or omission of the Company or the Company's contractors, subcontractors, and agents in their performance under this Agreement. However, this obligation shall not apply to (1) third party claims solely arising out of a negligent act or omission of the Authority or the City, or (2) third party claims against the City or Authority regarding the legality of this Agreement, the Grants, or appropriations of Tax Revenue. The Company's indemnification obligation shall survive termination of this Agreement.

V. **TERMINATION OF AGREEMENT**. This Agreement shall terminate upon the first to occur of: (1) the written agreement of the parties, (2) the Authority's payment of the full amount of the Grants set forth in Section III(D), (3) the end of the Payment Period, as the same may be extended

as provided herein, or (4) January 1, 2025, if the Company has not obtained a certificate of occupancy for the Project by such date. After termination of the Agreement, the parties will have no further obligations to each other except for the Company's indemnification obligation under Section IV.

**VI. ASSIGNMENTS.**

- A. The Company may assign this Agreement or any portion thereof, or any funds due to it hereunder, only as follows, (i) to any wholly-owned subsidiary or other related party of the Company or to any company that is the successor by merger, asset purchase or otherwise to all or substantially all of its business (and any such party shall assume all obligations of the Company under this Agreement), or (ii) the Bank, the Authority acknowledging that the Bank is making a loan to the Company to finance the development of the Project. The Authority and Company agree that upon receipt of notice from the Bank that an event of default by the Company has occurred and is occurring under the Company's loan instruments with the Bank for the financing of the Project, the Authority shall pay Grants due and owing directly to or at the direction of the Bank rather than to the Company. In the event of such assignment, the Company will still remain ultimately responsible and liable for the performance of its obligations hereunder.
- B. Upon any permitted assignment of this Agreement, the Bank or any other assignee of this Agreement has the right of third party enforcement of the Company's rights under this Agreement, and the Bank or other assignee of this Agreement may enforce the Company's rights pursuant to such permitted assignment with the same force and effect as if enforced by Company. Upon such assignment, the Bank or other assignee of this Agreement may, but shall not be required to, perform the obligations of the Company hereunder. If the Bank or other assignee of this Agreement undertakes in writing to perform the obligations of the Company after assignment of this Agreement, the Authority will accept its performance in lieu of performance by the Company in satisfaction of the Company's obligations under this Agreement.

**VII. GRANTS SUBJECT TO APPROPRIATIONS; DISCLAIMER.**

- A. The Authority's obligation to make Grant payments to the Company is subject to the Authority's receipt of appropriations from the City sufficient to make such payments. The Authority agrees to use its best efforts to secure the necessary appropriations from the City.
- B. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the Authority or the City within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers nor as a donation or a lending of the credit of the Authority or City within the meaning of the Virginia Constitution. This Agreement shall not directly or indirectly obligate the Authority or the City for any fiscal year in which this Agreement shall be in effect nor to make any payments beyond those appropriated in the sole discretion of the City and the Authority. No

provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Authority or the City's moneys, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future Authority Board. To the extent of any conflict between this section and any other provision of this Agreement, this section takes priority.

- C. In the event that the City does not appropriate sufficient amounts for the Authority to fulfill its obligations hereunder, the Payment Period shall be extended until the City makes such appropriation to the Authority for the purpose of making Grant payments hereunder.

**VIII. MISCELLANEOUS.**

- A. Governing Law. The law of the Commonwealth of Virginia shall govern this Agreement, and the exclusive venue for actions regarding this Agreement shall be the Petersburg Circuit Court.

- B. Communications. Any communication under this Agreement shall be sufficiently given when delivered by hand or by first-class certified mail, postage prepaid, as follows:

- a. If to the Company:  
Tabb Street Development, LLC  
244 South Sycamore Street  
Petersburg, VA 23803

with a copy to: TBD

- b. If to the Authority:  
with copy to:

and: City Manager

- C. Entire Agreement; Amendments. This Agreement constitutes the entire contract between the parties and may not be changed except in writing signed by both parties.
- D. Binding Effect. This Agreement is binding upon the parties and their respective successors and assigns.
- E. Force Majeure. Any delay in performance shall not be a breach of this Agreement if such delay has been caused by or is the result of acts of God; acts of the public enemy; insurrections; riots; embargoes; labor disputes, including strikes, lockouts, job actions, or boycotts; shortages of materials or energy; fires; explosions; floods; or other unforeseeable causes beyond the control and without the fault or negligence of the party whose performance is delayed. Such party shall give prompt notice to the other party of the cause for delay and shall take reasonable steps to resume performance as soon as possible. The time for performance shall be extended for a

period equal to the period of delay due to the reasons set forth in this paragraph.

- F. Severability. If any court of competent jurisdiction holds any provision of this Agreement invalid, then (a) such holding shall not invalidate any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (b) the remaining terms shall constitute the parties' entire agreement.
- G. Attorney's fees shall not be recoverable by the prevailing party in the event this Agreement is subject to litigation.

*[Remainder of page left blank; signature page follows]*

DRAFT

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers.

**ECONOMIC DEVELOPMENT  
AUTHORITY OF PETERSBURG,  
VIRGINIA**

**ATTEST:**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_

DATE: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

(COMPANY)

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_

36169903\_2

**Exhibit A**

**Description and Schematic of the Project**

DRAFT

**Exhibit B**

**Schedule of Grant Payments  
If 2020 is First Full Taxable Year<sup>1</sup>**

	<b>PAYMENT #</b>	<b>GRANT PAYMENT DATE</b>	<b>TAX PERIOD</b>
First Full Taxable Year	1	September 30, 2020	January – June 2020
	2	March 30, 2021	July – December 2020
Year 2	3	September 30, 2021	January – June 2021
	4	March 30, 2022	July – December 2021
Year 3	5	September 30, 2022	January – June 2022
	6	March 30, 2023	July – December 2022
Year 4	7	September 30, 2023	January – June 2023
	8	March 30, 2024	July – December 2023
Year 5	9	September 30, 2024	January – June 2024
	10	March 30, 2025	July – December 2024
Year 6	11	September 30, 2025	January – June 2025
	12	March 30, 2026	July – December 2025
Year 7	13	September 30, 2026	January – June 2026
	14	March 30, 2027	July – December 2026
Year 8	15	September 30, 2027	January – June 2027
	16	March 30, 2028	July – December 2027
Year 9	17	September 30, 2028	January – June 2028
	18	March 30, 2029	July – December 2028
Year 10	19	September 30, 2029	January – June 2029
	20	March 30, 2030	July – December 2029

<sup>1</sup> If 2023, 2024, or 2025 is the First Full Taxable Year and/or if any Grants are not delivered and this Schedule is to be extended, this Schedule will be modified accordingly for all payments.