ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement ("Agreement") is entered into and effective as of September ____, 2020 (the "Agreement Date"), by and among Lee Hall Plaza, Inc., a Virginia corporation and its assigns (the "Company"), and the Economic Development Authority of the City of Colonial Heights, 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 redevelopment of the property known as 401 Temple Avenue (as further described below, the "Site") in the City of Colonial Heights, 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 redevelopment of the Site will benefit the City, and the Authority has offered economic development incentives to induce the Company to redevelop the Site as provided in this Agreement; and

WHEREAS, in connection with redeveloping the Site, the Company is willing to make certain improvements on or about the Site as a result of the Authority's economic development incentives; and

WHEREAS, the Company intends to invest approximately $6,000,0000 in its redevelopment of the Site, and Tax Revenues from the Site in the five (5) years following completion of the Project are expected to exceed $1,600,000. 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:

"Director" means the Director of Finance for the City.

"First Full Taxable Year" means the first full tax year (January 1 - December 31) subsequent to the year of completion of the applicable Phase of the Project. The parties anticipate completion of the first Phase of the Project in calendar year 2022. Subsequent Taxable Years shall run

in twelve-month increments following the First Full Taxable Year for each Phase.

"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 succeeding full tax years until the Total Grant Amount is paid as provided by the provisions of Section III(E).

"Project" means the work and improvements, as applicable, to occur in two Phases as described in Exhibit A to this Agreement.

"Site" means 401 Temple Avenue, Colonial Heights, Virginia as more particularly depicted as Parcels 1, 2, 3, and 4 on Exhibit B (to include tax parcels divided into two Phases).

"Tax Period" means the six-month period (either January 1 to June 30 or July 1 to December 31) for which Tax Revenues will be computed for a Grant payment. See Exhibit C.

"Tax Revenue" means the sum of Business, Professional, and Occupational License taxes; meals taxes and ad valorem personal and real property taxes generated at, or otherwise arising from or related to, the Site and paid to the City, directly or indirectly, in a Tax Period for which the Company is entitled to a Grant hereunder. Tax Revenue shall not include any other taxes. 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.

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 the Project in accordance with the Project conditions in Exhibit A and with the plans submitted to and approved by the City's Planning and Community Development Department and Department of Public Works and in accordance with the site plan provisions in the Colonial Heights City Code, such approval not to be unreasonably withheld, conditioned or delayed.

B. The Planning and Community Development Department and the Department of Public Works in good faith consultation with the Project's general contractor, shall verify substantial completion of each Phase of the Project to City standards before any Grants applicable to such Phase are paid, such verification not to be unreasonably withheld, conditioned or delayed and as evidenced by certificates of occupancy issued by the City for such Phase of the Project.

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

A. Beginning in the First Full Taxable Year for each Phase of the project, Company may submit a written request for a Grant after the end of each Tax Period shown on Exhibit C. The Company shall provide a completed W-9 form to the Authority with its first written request for a Grant.

B. The Company shall make reasonable efforts to provide the Director written consent for disclosure of confidential tax information to the Director from each entity at the Site whose taxes are to be included in the determination of Tax Revenue and have not volunteered such information to the City. In the event such information is not forthcoming from an entity, the City will approximate the required information based upon prior year sales information or other reasonable estimation procedures.

C. The Director shall make a good faith determination of the Tax Revenue for each tax year.

D. The Authority shall pay the Company a Grant equal to the amount of Tax Revenue for the relevant Tax Period up to the maximum amount for the Tax Periods for the applicable Phase as shown in Exhibit C. The Grant amounts will vary based on the amount of Tax Revenue generated and paid during each applicable Tax Period. For the January 1 to June 30 Tax Period, the Grant payment shall be paid to the Company no later than the end of August following completion of the Tax Period. For the July 1 to December 31 Tax Period, the Grant payment shall be paid to the Company no later than the end of February following completion of the Tax Period.

E. The Authority will pay a Grant for each Tax Period until the Authority has paid the Company Grants up to an aggregate maximum of $1,600,000.00 ("Total Grant Amount"). The Authority will not pay Grants for Tax Revenue for any tax year in which there is no Tax Revenue and will not pay Grants in excess of the maximum amount for the Tax Periods or Phases as shown in Exhibit C; 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, until the Total Grant Amount is paid to the Company.

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 grossly negligent act or omission of the Authority or the City, (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 (1) upon the written agreement of the parties and any Bank, as defined below, of which the Authority has received

notice, or (2) upon the Authority's payment of the Total Grant Amount, whichever comes first. After termination of the Agreement, the parties will have no further obligations to each other except for the following, which survive termination: (i) the Company's indemnification obligation under Section IV; (ii) the obligation to pay the Company accrued but unpaid Grants; and (iii) the Company's compliance with the restrictions on Prohibited Uses discussed in Section VIII. H. of this Agreement and listed in Exhibit D.

VI. ASSIGNMENTS.

A. The Company may assign this Agreement or any portion thereof, or any funds due to it under this Agreement, including the receipt of Grants or its rights thereto, only to (i) any wholly-owned subsidiary or affiliate of Company or to any successor in interest with respect to fee simple title to the Project or Site, or (ii) any third-party lending institution or its affiliates financing the Project (the "Bank"), the Authority acknowledging that the Bank is making a loan to the Company to facilitate completion 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 hereunder directly to or at the direction of the Bank rather than the Company. In the event of such assignment, the Company will remain ultimately responsible for the performance of its obligations under this Agreement, subject to the following Section VI(B). In the event of a foreclosure by the Bank under its deed of trust, the Bank shall have the right to advertise and sell the Project or Site subject to the benefits and burdens of this Agreement and in such event, the purchaser at foreclosure shall be entitled to the Grants, provided such purchaser has completed the Project in accordance with the terms of this Agreement.

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 Colonial Heights Circuit Court.

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

a. If to the Company:	Daniel Hargett Lee Hall Plaza, Inc. 2800 Patterson Avenue, Suite 200 Richmond, VA 23221
With a copy to:	Peake Law Group, PC Attn: Tonia E. Peake, Esq. 14241 Midlothian Tnpk, Ste 216 Midlothian, VA 23113
b. If to the Authority:	Douglas E. Smith City Manager P. O. Box 3401 Colonial Heights, VA 23834
c. With a copy to:	City Attorney P. O. Box 3401 Colonial Heights, VA 23834

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. The Authority acknowledges that the Company's loan instruments with the Bank for the financing of the Project place

restrictions on the Company's ability to enter into amendments to this Agreement and accordingly the Authority shall not enter into any such amendments without evidence that the Bank has consented to same or that such consent is not required.

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; provided however, that Force Majeure shall not excuse or delay the payment of monetary obligations hereunder.

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. Attorney's fees shall not be recoverable by the prevailing party in the event this Agreement is subject to litigation.

H. Site Declaration. Following the Company's acquisition of fee simple title to the Site, the Company agrees to record in the land records of the Circuit Court, City of Colonial Heights, Virginia, a Declaration of Easements, Covenants and Restrictions which, *inter alia*, will provide for cross access, installation and operation of utilities, and restrictive covenants as deemed reasonably necessary or desirable by the Company to facilitate the development and operation of the Site (the "Declaration"). The Declaration's restrictive covenants shall prohibit use of the Site for any of the uses described in Exhibit D attached hereto (the "Prohibited Uses"), the parties hereto understanding that the Prohibited Uses shall be for the sole benefit of the Authority and the City (and therefore may be waived only by a written instrument executed by the Authority and the City). No Grant shall be paid under this Agreement until the Declaration of Easements, Covenants and Restrictions is recorded as described above.

I. Memorandum of Agreement. Simultaneous with the Company's acquisition of fee simple title to the Site, the Company shall record in the land records of the Circuit Court, City of Colonial Heights, Virginia, a Memorandum of Agreement reflecting the Company's obligation under this Agreement to record the Declaration and Prohibited Uses against the Site, which shall provide notice to and be binding upon successors in interest to fee simple title to the Site and run with the land.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly authorized and executed as set forth below.

COMPANY:

LEE HALL PLAZA, INC., a Virginia corporation

By: _____
Daniel Hargett, Vice President

AUTHORITY:

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF COLONIAL HEIGHTS, VIRGINIA, a Virginia political subdivision

By: _____
Name: _____
Title: Chairman

By: _____
Name: _____
Title: Secretary

SEEN AND AGREED:

CITY OF COLONIAL HEIGHTS, VIRGINIA, a Virginia political subdivision

By: _____
Name: _____
Title: City Manager

APPROVED AS TO FORM:

By: _____
Name: _____
Title: City Attorney

Exhibit A

Description of the Project

The Project shall occur in two Phases as outlined on Exhibit B. The following Project conditions apply and shall be deemed complete as applicable to each Phase upon the City's issuance of certificates of occupancy for any improvements located on each applicable Phase.

Landscaping

- Shall be in general conformance with a landscaping plan the Company shall design to provide adequate screening for adjacent properties. This shall include a combination of trees and bushes to provide a natural screen along the rear of the property adjacent to residential homes and shall meet the requirements of City Code §286-512.02 and §286-512.04.
- Each user must submit a professional landscape plan for review and approval by the Company as part of their site plan package. These plans will provide consistent landscape design throughout multi-parcel development and shall be in accordance with the Colonial Heights City Code and with the Project conditions included in this Exhibit A.
- Landscape islands shall be constructed with 6" curb or curb & gutter. The Development shall meet the requirements of City Code §286-512.20 & §286-512.24
- All lawn areas shall have a healthy stand of grass within 3 months of business opening date.
- All perimeter areas of parking areas shall have a complimentary mix of trees, shrubs, and planting beds that highlight and enhance each parking area and shall meet the requirements of City Code §286-512.12.
- Each outparcel shall have an irrigation system to ensure landscaping remains in good health.

Site Lighting

- All Site Lighting Pole Bases will follow same detail with concrete bases being 24" in diameter and 3' above finish grade. This will be detailed on all site plans.
- Site Lighting Poles are to be no taller than 25' above finish grade.
- Site Lighting Poles and fixtures shall be same color throughout development and on ALL parcels (Dark Bronze).
- All users shall submit a photometric plan as part of their site plan approval process with 0 foot candle requirement at the property line. Lighting will incorporate dark sky friendly features.

Building Materials/Design

- All buildings within the development shall be designed so that the exterior elevation of each shall be aesthetically compatible.
- Building Height(s) will be limited to 45' in height as measured from finish floor (FFE) to highest point on the building excluding any architectural elements such as roof embellishments.
- All Rooftop Equipment installed on any of the buildings within the development shall be screened in a manner that shields such equipment from view at the boundary of user's property line. All HVAC equipment shall meet the requirements of City Code §286-512.08(D).
- Buildings will be constructed to incorporate materials that are primarily Masonry or EIFS. Buildings will incorporate exterior stone and/or brick accent work where possible. No building

facade (whether front, side, or rear) shall consist of architectural materials that differ in composition, appearance, or detail from any other facade of the same building. This is not to preclude the use of varying materials on different facades, but to preclude the use of inferior materials on sides facing adjoining properties or that may impact pedestrian activity or future use of adjacent properties. No portion of a building shall be constructed of unadorned cinder block, corrugated or sheet metal, or other semi-permanent materials.

- Each outparcel user is required to submit preliminary exterior elevations to the Company for preliminary review (showing height, design, and colors), and shall ensure that such elevations comply with this Exhibit A and the Colonial Heights City Code.
- Dumpsters shall have screening constructed of the building materials previously specified herein and shall meet the requirements of City Code §286-512.08(C).
- Electric car charging station is highly encouraged and will be considered for installation.

Public Improvements on Hamilton Avenue

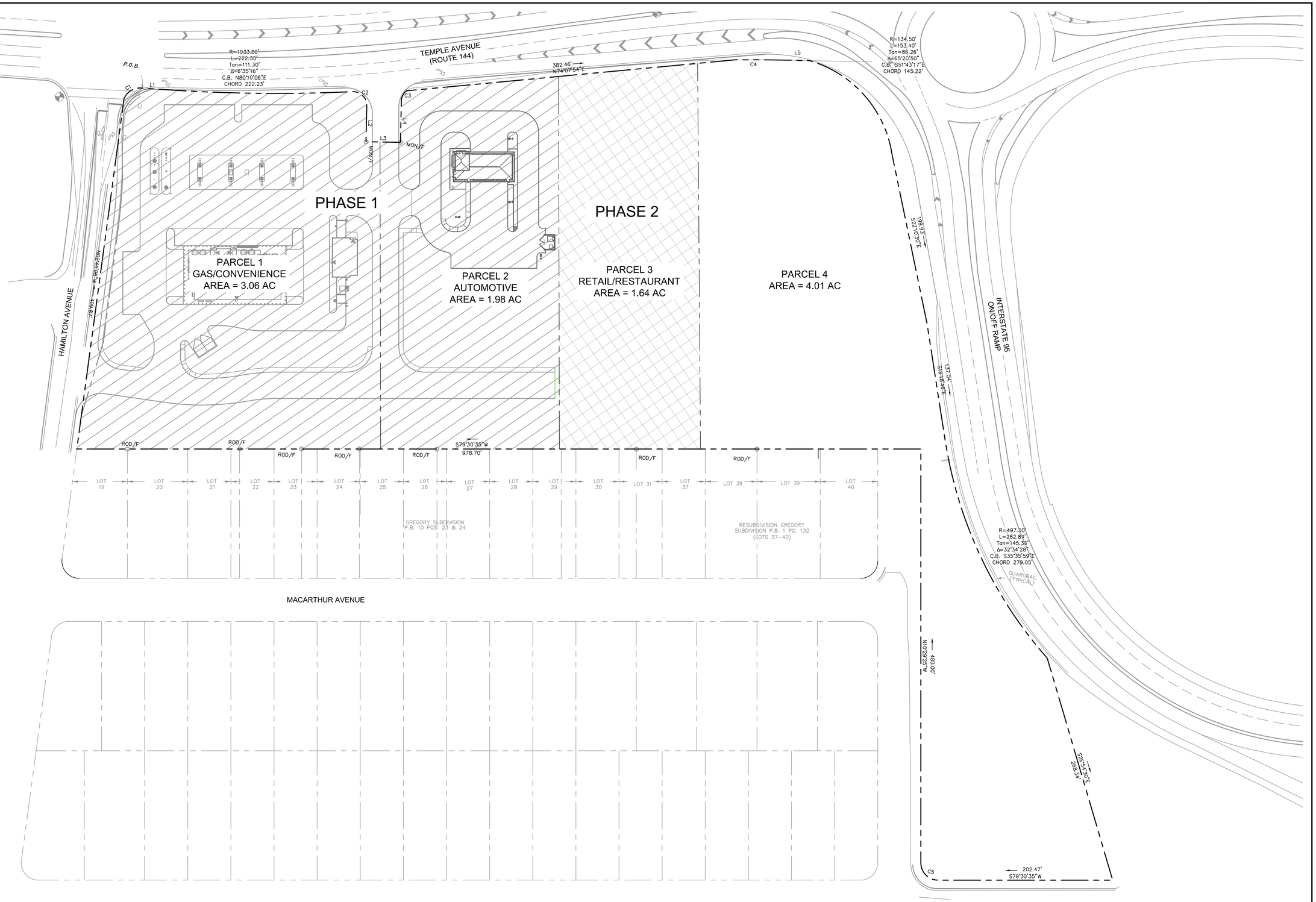
- If the developer chooses to utilize the results of the traffic study submitted for the previous planned, but ultimately canceled, development (Kroger), a memo will be submitted to the City by a licensed professional engineer providing verification that the proposed development will produce equal or less traffic than Kroger's traffic analysis study.
- Based on the study, roadway improvements may be needed on Hamilton Avenue. If the Company chooses to follow the traffic study produced for the Kroger development, roadway improvements similar to the previously approved RKK plans will need to be installed.
- Sidewalk will be installed on the east side of Hamilton Avenue.

Pedestrian Access within Development

- Any internal access roadways within the development shall have dedicated pedestrian access from Hamilton Avenue to include a sidewalk, to provide access to all developed parcels, on the back side of the site next to the buffer for the adjacent neighborhood.
- All proposed buildings within the development shall have dedicated pedestrian access to the main entrance of each respective business.

Exhibit B

<u>The Site</u>



No.	REVISIONS	DATE	BY

Kimley»Horn

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1700 WILLOW LAWN DR, SUITE 200, RICHMOND, VA 23230
PHONE: 804-673-3882
WWW.KIMLEY-HORN.COM

KHA PROJECT 113160049
DATE 9/09/2020
SCALE AS SHOWN
DESIGNED BY ___
DRAWN BY ___
CHECKED BY ___

TEMPLE AVENUE

PREPARED FOR

REBKEE

CITY OF COLONIAL HEIGHTS VIRGINIA

LICENSED PROFESSIONAL

DATE:

PROPERTY EXHIBIT

SHEET NUMBER

EX-1

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Plotted By:Boyd, Mark Sheet:Kha Layout:Layout1 September 09, 2020 04:08:51pm K:\RIC_CIV\113160049 - Temple Ave Commercial - Colonial Heights, VA\CAD\Exhibits\Temple Ave Property Exhibit.dwg

Exhibit C

Schedule of Grant Payments

Phase	**Taxable Year**	**Tax Period**	**Maximum Grant Amount Payable to Company***
I	First Full Taxable Year	1	$240,000
I	First Full Taxable Year	2	$240,000 less payment from Tax Period 1
I	Second Full Taxable Year	3	$240,000
I	Second Full Taxable Year	4	$240,000 less payment from Tax Period 3
I	Third Full Taxable Year	5	$240,000
I	Third Full Taxable Year	6	$240,000 less payment from Tax Period 5
I	Fourth Full Taxable Year	7	$240,000
I	Fourth Full Taxable Year	8	$240,000 less payment from Tax Period 7
I	Fifth Full Taxable Year	9	$240,000
I	Fifth Full Taxable Year	10**	$240,000 less payment from Tax Period 9
			*the Maximum Grant amount per Taxable Year for Phase I shall not exceed $240,000 **Any remaining Grant amount unpaid in prior Tax Periods for Phase I shall carry forward until the Total Grant Amount for Phase I, not to exceed $240,000 in a tax year, is paid
PHASE I TOTAL			**$1,200,000**

Phase	**Taxable Year**	**Tax Period**	**Maximum Grant Amount Payable to Company***
II	First Full Taxable Year	1	$80,000
II	First Full Taxable Year	2	$80,000 less payment from Tax Period 1
II	Second Full Taxable Year	3	$80,000
II	Second Full Taxable Year	4	$80,000 less payment from Tax Period 3

II	Third Full Taxable Year	5	$80,000
II	Third Full Taxable Year	6	$80,000 less payment from Tax Period 5
II	Fourth Full Taxable Year	7	$80,000
II	Fourth Full Taxable Year	8	$80,000 less payment from Tax Period 7
II	Fifth Full Taxable Year	9	$80,000
II	Fifth Full Taxable Year	10**	$80,000 less payment from Tax Period 9
			*the Maximum Grant amount per Taxable Year for Phase II shall not exceed $80,000 **Any remaining Grant amount unpaid in prior Tax Periods for Phase II shall carry forward until the Total Grant Amount for Phase II, not to exceed $80,000 in a tax year, is paid
PHASE II TOTAL			**$400,000**

PHASE I and II GRAND TOTAL		**$1,600,000**

Exhibit D

Prohibited Uses*

Residential use types:

- Home occupation
- Multi-family dwelling

Civic use types:

- Assisted care residence
- Club
- Correction facility
- Crisis center
- Cultural services
- Education facilities, college/university
- Education facilities, primary/secondary
- Governmental service
- Guidance service
- Halfway house
- Life care facility
- Nursing home
- Park and ride facility
- Post office
- Public assembly
- Public maintenance and service facility
- Public parks and recreational areas
- Religious assembly
- Safety service
- Utility service, major
- Utility service, minor

Office use types:

- Financial institution
- Laboratory
- Substance abuse clinic

Commercial use types:

- Adult use
- Agricultural service
- Antique shop
- Assembly hall
- Automobile dealership, new
- Automobile dealership, used
- Business support service
- Business/trade schools
- Consumer repair service
- Dance hall

Day care center
Flea market
Funeral service
Kennel, commercial
Itinerant merchant
Laundry
Manufactured home sales
Mobile food unit
Modular home sales
Pawn shop
Personal improvement service
Personal services
Private farmer's market
Recreational vehicle sales and service
Studio, fine arts
Studio, tattoo
Travel center

Industrial use types:
Construction yard
Custom manufacturing
Recycling center
Transportation terminal
Truck terminal

Miscellaneous uses:
Amateur radio tower
Parking facility, surface/structure
Tower

*****The uses shall have the definitions, meanings, or descriptions specified in Chapter 286 of the Colonial Heights City Code as of the Agreement Date.