

RESOLUTION NO. 12979-16

A RESOLUTION OF THE COUNCIL OF THE CITY OF NEWPORT NEWS, VIRGINIA, APPROVING A SUPPORT AGREEMENT FOR THE BENEFIT OF THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NEWPORT NEWS, VIRGINIA.

WHEREAS, the Economic Development Authority of the City of Newport News, Virginia (the Authority), is undertaking the purchase of six parcels of real property located at 13785 Warwick Boulevard, 360 Tabbs Lane, 13795 Warwick Boulevard, 13795B Warwick Boulevard, 13781 Warwick Boulevard, and 13783B Warwick Boulevard containing three buildings and with a total approximate acreage of 10.95 acres and an additional parcel located at 13771 Warwick Boulevard containing a strip shopping center and consisting of 9.42 acres (collectively, the Properties);

WHEREAS, the Authority has advised that Properties generate annual lease revenues of approximately \$900,000;

WHEREAS, the Authority, pursuant to the powers and purposes granted to it under Chapter 726 of the 1972 Acts of Assembly, as amended (the Act), has purchased the Properties due to their strategic location in the City of Newport News, Virginia (the City), which will provide future economic development opportunities benefitting the City;

WHEREAS, the Authority has approved a plan of finance with respect to the acquisition of the Properties totaling \$8,000,000;

WHEREAS, TowneBank (the Lender) has agreed, pursuant to a Financing Agreement dated as of November 1, 2016 (the Financing Agreement) between the Lender and the Authority, to finance the acquisition of the Properties and financing costs by making a loan (the Loan) to the Authority totaling \$8,000,000 bearing interest at the rate of 3.14% per annum, payable over a term of fifteen (15) years and containing flexible terms of prepayment, such Loan to be evidenced by two notes of the Authority (the Notes), one in the principal amount of \$3,100,000 and one in the principal amount of \$4,900,000;

WHEREAS, the Lender, as a condition to making the Loan has required that the City execute and deliver a Support Agreement (the Support Agreement) providing for the payment by the City, subject to annual appropriation, of debt service payments on the Loan to the extent lease revenues from the Properties are insufficient to pay such debt service;

WHEREAS, a draft of the Support Agreement has been presented at this meeting and the City Manager recommends the Council's approval of the Support Agreement and the Council's authorization of its execution on substantially the terms contained in the attached draft; and

WHEREAS, the Council hereby determines that a valid public purpose will be served by the undertakings set forth in the Support Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News, Virginia:

1. That it hereby authorizes and directs the City Manager to execute on behalf of the City a Support Agreement which substantially conforms with the terms of the draft Support Agreement presented at this meeting, a copy of which is attached hereto, with any changes to such agreement which the City Manager agrees to make first being subject to the review and approval as to form by the City Attorney before execution thereof.

2. That the payment obligations of the City under the Support Agreement shall be subject to annual appropriation by the Council for such purpose and shall not constitute a debt or other binding legal obligation of the City for the payment of money.

3. That an executed original of the Support Agreement shall be kept on file in the City's Department of Development.

4. That this resolution shall be in effect on and after the date of its adoption, November 22, 2016.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON NOVEMBER 22, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

SUPPORT AGREEMENT

THIS SUPPORT AGREEMENT (this Support Agreement), made and entered into as of the 22nd day of November, 2016, between the CITY OF NEWPORT NEWS, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the City) and the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NEWPORT NEWS, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the Authority).

W I T N E S S E T H :

WHEREAS, the Authority is undertaking the purchase of six parcels of real property located at 13785 Warwick Boulevard, 360 Tabbs Lane, 13795 Warwick Boulevard, 13795B Warwick Boulevard, 13781 Warwick Boulevard, and 13783B Warwick Boulevard (collectively, containing three buildings and with a total approximate acreage of 10.95 acres and an additional parcel located at 13771 Warwick Boulevard containing a strip shopping center and consisting of 9.42 acres (collectively, the Properties);

WHEREAS, the parties hereto have determined that the Properties generate annual lease revenues of approximately \$900,000;

WHEREAS, the Authority, pursuant to the powers and purposes granted to it under Chapter 726 of the 1972 Acts of Assembly, as amended (the Act), has purchased the Properties due to their strategic location in the City which will provide future economic development opportunities benefitting the City;

WHEREAS, the Authority has approved a plan of finance with respect to the acquisition of the Properties totaling \$8,000,000;

WHEREAS, TowneBank (the Lender) has agreed, pursuant to a Financing Agreement dated as of November 1, 2016 (the Financing Agreement) between the Lender and the Authority, to finance the acquisition of the Properties and financing costs by making a loan (the Loan) to the Authority totaling \$8,000,000 bearing interest at the rate of 3.14% per annum, payable over a term of fifteen (15) years and containing flexible terms of prepayment, such Loan to be evidenced by two notes of the Authority (the Notes), one in the principal amount of \$3,100,000 and one in the principal amount of \$4,900,000;

WHEREAS, the Lender, as a condition to making the Loan has required that the City execute and deliver this Support Agreement providing for the payment by the City, subject to annual appropriation, of debt service payments on the Loan to the extent lease revenues from the Properties are insufficient to pay such debt service;

WHEREAS, the parties hereto hereby determine that a valid public purpose will be served by the undertakings set forth in this Support Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1. Definitions. In addition to the words defined in the preambles of this Support Agreement, the following words as used in this Support Agreement shall have the following meanings unless a different meaning clearly appears from the context:

"Authority Resolution" means the Resolution No. 16-8 of the Authority adopted on November 4, 2016, approving this Support Agreement.

"Council" shall mean the Council of the City.

"Financing Agreement" means the Financing Agreement, dated as of November 1, 2016, between the Authority and the Lender, together with all duly authorized amendments thereto.

"Fiscal Year" means each twelve month period beginning on each July 1 and ending on each June 30.

"Pay" or "to pay" means any expenditure of money by the City in any Fiscal Year in connection with this Support Agreement which is subject to appropriation by the Council and solely for the Fiscal Year in which such appropriation is made, constitutes a current expense of the City within such Fiscal Year, and is subject to any prohibitions, restrictions or regulations imposed by applicable law.

"Resolution" means Resolution No. _____ enacted by the Council on November 22, 2016, and approving this Support Agreement.

Section 1.2. Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Support Agreement:

(a) Words importing the singular number shall include the plural number and vice versa;

(b) Words importing the masculine gender shall include the feminine and neuter genders and vice versa;

(c) Unless otherwise indicated, all references herein to particular Articles or Sections are references to Articles or Sections of this Support Agreement; and

(d) The headings herein are solely for convenience of reference and shall not constitute a part of this Support Agreement nor shall they affect its meaning, construction or effect.

ARTICLE II.
REPRESENTATIONS

Section 2.1. Representations of the City. The City makes the following representations in connection with its undertakings pursuant to this Support Agreement:

(a) The City (i) is a political subdivision of the Commonwealth of Virginia, (ii) has the power to enter into this Support Agreement and the transactions contemplated hereby and to perform its obligations hereunder, and (iii) by proper action has duly authorized the execution and delivery of, and performance of its obligations under, this Support Agreement;

(b) The execution and delivery of and compliance by the City with the terms and conditions of this Support Agreement will not conflict with, or constitute or result in a default under or violation of, any existing law, rule or regulation applicable to the City, and no event has occurred and is continuing that with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation;

(c) The City has delivered to the Authority the following documents, each dated or certified as of the date of delivery of this Support Agreement: (i) a certified copy of the Resolution; and (ii) an opinion of the City Attorney, subject to customary exceptions and qualifications, substantially to the effect that this Support Agreement has been duly authorized, executed and delivered by the City and is enforceable against the City in accordance with its terms;

(d) No further approval, consent or withholding of objection on the part of any regulatory body or any official is required as a condition precedent to the execution or delivery of, or performance by the City with, the terms and conditions of this Support Agreement;

(e) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the City's knowledge, threatened against it with respect to (i) the creation and existence of the City, (ii) its authority to execute and deliver this Support Agreement, (iii) the validity or enforceability of this Support Agreement, (iv) the title of any officer of the City executing this Support Agreement, or (v) any authority or proceedings related to the execution and delivery of this Support Agreement on behalf of the City, and no such authority or proceeding has been repealed, revoked, rescinded or amended, and each is in full force and effect on the date hereof; and

(f) When duly executed and delivered on behalf of the City, and assuming its due authorization, execution and delivery by the Authority, this Support Agreement, shall constitute a valid and binding obligation of the City enforceable against the City in accordance with its terms.

Section 2.2 Representations of the Authority. The Authority makes the following representations in connection with its undertakings pursuant to this Support Agreement:

- (a) The Authority is duly established, organized and operating under the Act;
- (b) Under the provisions of the Act, the Authority is duly authorized to enter into, execute and deliver this Support Agreement, to undertake the obligations contemplated by this Support Agreement and the Financing Agreement and to carry out its obligations hereunder and thereunder;
- (c) By the duly adopted Authority Resolution, the Authority has duly authorized the execution, delivery and performance of the Financing Agreement, the Notes, this Support Agreement and all related documents;
- (d) The Authority's execution and delivery of and performance under the Financing Agreement, the Notes, this Support Agreement and all related documents will not conflict with, or constitute a breach of or default under, or require any consent pursuant to, any law or regulation presently applicable to the Authority (except for such consents and approvals as have heretofore been obtained), the bylaws of the Authority, any order of any court, regulatory body or arbitral tribunal or any agreement or instrument to which the Authority is a party or by which it is bound;
- (e) There are no judicial, regulatory or arbitral proceedings pending or, to the knowledge of the Authority, threatened against the Authority which, if decided adversely to the Authority, would have a material adverse effect on any of the transactions or undertakings of the Authority in connection with this Support Agreement, the Financing Agreement, the Notes or any related documents;
- (f) When duly executed and delivered on behalf of the Authority, and assuming the due authorization, execution and delivery by the other parties thereto, each of the Financing Agreement, the Notes and this Support Agreement, shall constitute a valid and binding obligation of the Authority enforceable against the Authority in accordance with their terms;
- (g) The Authority will cause the proceeds of the Loan to be applied solely to the purposes identified in the preambles to this Support Agreement and in the Financing Agreement;
- (h) The Authority will use the Properties in accordance with the Act;
- (i) The Financing Agreement and this Support Agreement do not contain any misrepresentation or untrue statement of material fact or omit to state a material fact necessary in order to make any such representation or statement contained therein not misleading;
- (j) The Authority has delivered to the City the following documents, each dated or certified as of the date of delivery of this Support Agreement: (i) a certified copy of the Authority Resolution; (ii) an opinion of counsel to the Authority, subject to customary exceptions and qualifications, substantially to the effect that the Financing Agreement, the Notes and this Support Agreement have been duly authorized, executed and delivered by the Authority

and are enforceable against the Authority in accordance with their respective terms; and (iii) a true copy of the Financing Agreement;

(k) No litigation of any kind or any proceeding before any court at law or in equity or before any governmental agency is now pending or, to the Authority's knowledge, threatened with respect to (i) the organization or existence of the Authority, (ii) its authority to execute and deliver the Financing Agreement, the Notes, this Support Agreement or any related document, (iii) the validity or enforceability of the Financing Agreement, the Notes, this Support Agreement or any related document or the transactions contemplated thereby or hereby, (iv) the titles of the officers who executed or will execute the Financing Agreement, the Notes, this Support Agreement or any related document, (v) any authority or proceedings relating to the execution and delivery of the Financing Agreement, the Notes, this Support Agreement or any related document by the Authority, (vi) the ability of the Authority to lease the Properties, or (vii) any matter which would have a material adverse effect on the Authority's assets, condition (financial or otherwise), operations or prospects;

(l) The Authority is not in default in the payment of the principal of or interest on any of its obligations for borrowed money and is not in default under any instrument under and subject to which any obligations for borrowed money have been incurred. No event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including but not limited to this Support Agreement, which constitutes, or which, with the lapse of time or the giving of notice, or both, would constitute or result in an event of default thereunder; and

(m) The Authority is not in violation of the Act.

ARTICLE III. OBLIGATIONS OF PARTIES

Section 3.1 Undertakings of the Authority.

(a) The Authority shall deliver to the City annually no later than March 1 the Authority's proposed operating budget for the Properties for the next succeeding Fiscal Year in form and detail reasonably acceptable to the City Manager and the City's Director of Budget and Evaluation, such proposed operating budget to include the Authority's expected expenses and liabilities, including contingent payments, and the Authority's expected sources of revenue, including lease revenues and non-operating revenues. The Authority also shall deliver to the City annually no later than March 1 a statement of the amounts payable under the Loan in the next succeeding Fiscal Year, which also constitutes a Fiscal Year of the City.

(b) The Authority shall provide the City Manager periodic reports on the status of the use and occupancy of the Properties in such detail to accommodate the City Manager in the exercise of his reporting duties under Section 3.2(b) of this Support Agreement.

(c) The Authority shall maintain, or cause to be maintained, the Properties in good condition subject to ordinary wear and tear and shall insure the Properties, or cause the Properties to be insured, in such amounts and with such coverages as are customary for facilities similar to the Properties.

(d) In order to assist in the payment of the Loan in each Fiscal Year, which also constitutes a Fiscal Year of the Authority, if the Authority is unable to make such payment, in whole or in part, the Authority shall notify the City, in writing, such notice to be addressed to the City at its address set forth in Section 4.9 of this Support Agreement and to include (i) a statement of the Authority's inability to make all or a portion of such Loan payment, (ii) the total amount of such deficiency and (iii) a statement of the reasons for such inability to make payment in full, evidenced by appropriate documentation. The Authority shall provide such notice to the City as soon as it determines that it will be unable to pay its obligation under the Loan in whole or in part. The Authority shall allow the City to inspect its financial records with respect to the Properties.

Section 3.2 Undertakings of the City.

(a) The City Manager shall include in his recommended annual operating budget during the term of the Loan the City's support for the Authority's payment of amounts owed under the Loan for the next succeeding Fiscal Year of the City based upon his review of the budget information provided by the Authority under Section 3.1(a) of this Support Agreement. During each Fiscal Year of the City, within fifteen (15) days of receipt of the Authority's written notice pursuant to Section 3.1(d) of this Support Agreement, the City Manager shall request in writing that the Council appropriate funds in order for the City to pay the Authority's Loan payment obligation if such required funding has not already been appropriated, which appropriation the Council shall have no legal obligation to make. The City shall, and does hereby agree to pay promptly to the Authority, subject to annual appropriation, the Authority's Loan payment obligations then due.

(b) The City Manager shall provide the Council periodic reports on the status of the use and occupancy of the Properties based upon information provided by the Authority.

(c) The City hereby consents to the pledge to the Lender of the Authority's rights to receive payments under this Support Agreement and agrees upon request of the Lender to pay amounts appropriated by the Council directly to the Lender.

(d) The payment obligations of the City hereunder shall not constitute a debt of the City under any Virginia Constitutional or statutory provision. The payments under this Support Agreement constitute a moral obligation of the City not a legal obligation of the City and are subject to the legislative discretion of the Council to annually appropriate funds for such purpose.

ARTICLE IV. MISCELLANEOUS

Section 4.1 Term of Agreement. The term for this Support Agreement shall commence on the date of delivery of the Financing Agreement and shall terminate on the date of payment in full of the Loan.

Section 4.2 Lender as Third Party Beneficiary. By its making of the Loan, the Lender shall become a third party beneficiary of this Support Agreement and shall be entitled to enforce

all of the obligations and rights of the parties hereto to the same extent as if the Lender were one of the contracting parties.

Section 4.3 Defaults. (a) If any party to this Support Agreement fails to comply with any covenant or obligation set forth herein, the other party to this Support Agreement may proceed to protect and enforce its rights by an action for specific performance, subject to the limitations set forth in Section 3.2.

(b) Notwithstanding anything herein to the contrary, any failure of the City to comply with any of its obligations in this Support Agreement (i) shall not be deemed to constitute an event of default under the Loan or the Financing Agreement and (ii) shall not give rise to any right or remedy other than that described in Section 4.3(a) above.

Section 4.4 No Liability. Notwithstanding anything herein to the contrary, the Authority acknowledges that the City has not incurred nor will incur any liability arising out of the ownership of the Properties by the Authority or any other party.

Section 4.5 Amendments. This Support Agreement may be amended by the parties hereto so long as such amendment is consented to by the Lender, which consent may not be unreasonably withheld.

Section 4.6 Successors. This Support Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors or assigns.

Section 4.7 Severability. If any provision of this Support Agreement shall be held to be illegal or invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof and this Support Agreement shall be construed and enforced as if such illegal provision had not been contained in it.

Section 4.8 Counterparts. This Support Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 4.9 Notices. Unless otherwise provided in this Support Agreement, all notices, approvals, consents, requests and other communications under this Support Agreement shall be in writing and shall be deemed to be given when delivered in person, or when sent by overnight delivery or courier service, or when mailed by registered or certified mail, postage prepaid, addressed (a) if to the Authority, at 2400 Washington Avenue, 3rd Floor, Newport News, Virginia 23607, Attention: Chair, (b) if to the City, at 2400 Washington Avenue, Newport News, Virginia 23607 Attention: City Manager, with a copy to the Director of Budget and Evaluation and the City Attorney or (c) if to the Lender, at 6001 Harbor View Boulevard, Suffolk, Virginia 23435, Attention: President. The Authority, the City and the Lender may, by notice given under this Support Agreement, designate any additional or different addresses or persons to which subsequent demands, notices, approvals, consents, requests and other communications shall be sent.

Section 4.10 This Support Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties have caused this Support Agreement to be entered into as of the date first above written.

CITY OF NEWPORT NEWS, VIRGINIA
2400 Washington Avenue, 10th Floor
Newport News, Virginia 23607

James M. Bourey, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF NEWPORT NEWS, VIRGINIA
2400 Washington Avenue, 3rd Floor
Newport News, Virginia 23607

By: _____
Wendy C. Drucker, Chair

APPROVED AS TO FORM:

Raymond H. Suttle, Jr.
Counsel to the Authority

sdm15009