

**RESOLUTION EXTENDING THE TIME PERIOD
FOR DEFEASANCE OF VANGUARD LANDING
PROMISSORY NOTE BY SENTARA HEALTHCARE**

WHEREAS, the City of Virginia Beach Development Authority (the "Authority") was created pursuant to Chapter 643 of the Acts of Assembly of 1964, as amended (the "Act");

WHEREAS, pursuant to §10 of the Act, the City of Virginia Beach (the "City") "is authorized and empowered to make appropriations and to provide funds for the operation of the Authority and to further its purposes";

WHEREAS, on December 17, 2013 the Authority adopted a resolution authorizing a loan to Vanguard Landing, Inc., a Virginia non-profit corporation ("Vanguard Landing") to provide funding for Vanguard Landing's purchase of approximately 74.54 acres of property off Princess Anne Road, located south of the intersection of Princess Anne Road and Sandbridge Road (the "Property");

WHEREAS, Vanguard Landing proposed to develop the Property into a mixed-use facility consisting of residential, retail and commercial components for citizens with intellectual disabilities (the "Project");

WHEREAS, on February 13, 2014, the Authority made a loan in the amount of \$2,850,406.00 to Vanguard Landing (the "Loan") and Vanguard Landing acquired the Property;

WHEREAS, the Authority funded the Loan with appropriation from City Council for the purpose of making the Loan;

WHEREAS, the Loan is evidenced by a promissory note dated February 13, 2014 (the "Promissory Note") and secured by a deed of trust also dated February 13, 2014 and recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, as Instrument No. 2014022000014460 (the "Deed of Trust");

WHEREAS, under the terms of the Promissory Note, Vanguard Landing was required to have completed construction of at least one (1) building at the Project on or before February 13, 2019, and (2) submit an annual written report of its progress towards obtaining necessary approvals for the Project;

WHEREAS, to date, Vanguard Landing has not commenced construction on any buildings for the Project and remains in default under the Promissory Note;

WHEREAS, Vanguard Landing has timely made all payments due under the Promissory Note, totaling \$728,032.48, and the current outstanding balance is \$2,122,373.52;

WHEREAS, Sentara Healthcare, a Virginia nonstock corporation (“Sentara”), has approached the Authority about defeasing the Authority’s interest in the Promissory Note for the discounted price of \$1,200,000, upon which the Promissory Note shall be immediately retired and the Deed of Trust shall be released;

WHEREAS, Sentara has represented that it recognizes the need for the Project, or a similar project allowed by the current zoning, on the Property and that its defeasance of the Promissory Note is contingent upon Sentara entering into an agreement with Vanguard Landing pursuant to which the Project will be required to be built;

WHEREAS, the Authority believes that agreeing to the defeasance and retirement of the Promissory Note to Sentara will both increase the chance of success of the Project and best protect the interests of the Authority;

WHEREAS, on April 18, 2023, the Authority approved the defeasance and retirement of its interest in the Promissory Note and Deed of Trust upon payment of \$1,200,000 by Sentara Healthcare to the Authority within sixty (60) days (the “April Resolution”); and

WHEREAS, Sentara has requested an additional ninety (90) days to reach an agreement with Vanguard Landing and the Authority believes the extension is in the best interest of the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY:

1. That the Authority hereby approves extending time for Sentara to reach an agreement with Vanguard Landing and pay the Authority \$1,200,000 for ninety (90) days.
2. Except for the extension of time set forth herein, all other terms and conditions of the April Resolution remain unchanged and in full force and effect.
3. The Chair or Vice-Chair are hereby authorized to execute such documents as may be necessary to evidence the transactions referenced above, including but not limited to certificates of satisfaction and release of the Promissory Note and the Deed of Trust, so long as such documents are acceptable to the Chair or Vice-Chair, and are in a form deemed satisfactory by the City Attorney.

[SIGNATURES ON FOLLOWING PAGE]

Adopted this 20th day of June, 2023, by the City of Virginia Beach Development Authority.

CITY OF VIRGINIA BEACH
DEVELOPMENT AUTHORITY

By: 
Secretary / Assistant Secretary

APPROVED AS TO CONTENT:


Economic Development

APPROVED AS TO LEGAL
SUFFICIENCY:


City Attorney

A RESOLUTION APPROVING THE PROVISION
OF \$1,500,000 IN ECONOMIC DEVELOPMENT
INVESTMENT PROGRAM FUNDS TO
ZIM AMERICAN INTEGRATED SHIPPING
SERVICES COMPANY, LLC

WHEREAS, the City of Virginia Beach Development Authority (the "Authority") was created pursuant to Chapter 643 of the Acts of Assembly of 1964, as amended (the "Act");

WHEREAS, one of the primary purposes of the Act is to enable development authorities "to promote industry and develop trade by inducing manufacturing, industrial, governmental and commercial enterprises to locate in or remain in the Commonwealth....";

WHEREAS, pursuant to §6 of the Act, the Authority has the power, *inter alia*, "to sell, exchange, donate and convey any or all of its facilities or other properties whether realty or personalty whenever the Authority shall find any such action to be in furtherance of the purposes for which the Authority was organized";

WHEREAS, pursuant to §7 of the Act, "the Authority may foster and stimulate the development of industry in the area within its jurisdiction... [and] may accept, and expend for the purposes stated above, money from any public or private source....";

WHEREAS, pursuant to §10 of the Act, the City of Virginia Beach (the "City") "is authorized and empowered to make appropriations and to provide funds for the operation of the Authority and to further its purposes";

WHEREAS, the economic development goals and objectives of the City include achieving a higher ratio of nonresidential to residential real estate assessments, investing in land and infrastructure to benefit future economic growth, and maximizing the return of economic development efforts through the development and implementation of programs and strategies that facilitate new business investment and encourage retention and expansion activities, thereby improving the overall quality of life in the City;

WHEREAS, the City established the Economic Development Investment Program ("EDIP") as part of its overall effort to enhance the City's ability to accomplish these goals and objectives;

WHEREAS, pursuant to the authority and empowerment set forth in §10 of the Act, City Council authorized the transfer of funds in the EDIP account to the Authority and the provision of future EDIP appropriations to the Authority to enable the Authority to more effectively continue its efforts to foster and stimulate economic development by inducing businesses to locate or remain in the City;

WHEREAS, the Department of Economic Development (the "Department"), acting on behalf of the Authority, has induced ZIM American Integrated Shipping Services Company, LLC, a New York limited liability company, authorized to transact business in Virginia (the

“Recipient”), to relocate its operation to 4425 Corporation Lane, Virginia Beach, Virginia 23462 (the “Property”);

WHEREAS, the inducement includes an agreement to recommend the award to Recipient of \$1,500,000.00 in EDIP funds to underwrite a portion of costs associated with the expansion and relocation of Recipient’s operation at the Property;

WHEREAS, Recipient has represented in its application and the Director of Economic Development (the “Director”), upon review of the application submitted by Recipient, has determined and has advised the Authority it will meet at least one of the following performance criteria (the “Performance Criteria”) within thirty-six (36) months after the date of this Resolution.

- (a) Tax Revenues: The net amount of direct tax revenues returned to the City as a result of the Recipient’s operation will exceed the amount of EDIP Funds provided in thirty-six (36) months; and/or
- (b) Capital Investment: For every one dollar (\$1.00) of EDIP funds received, Recipient shall make a new capital investment of at least \$25.00; with the maximum award for this criteria to be limited to \$556,000.00 of the \$1,500,000.00 total award; and/or
- (c) Employment Opportunity: For every \$1,581.24 of EDIP funds received, Recipient will create and/or retain one (1) new “full-time equivalent” employment opportunity in its operation with an average salary of \$50,001.00 to \$75,000.00, excluding benefits, with the maximum award for this criteria to be limited to \$944,000.00 of the \$1,500,000.00 total award.

WHEREAS, the Director of Economic Development, upon review of the application submitted by Recipient, has determined and has advised the Authority that one or more of the following criteria has been met:

- (i) the net amount of direct tax revenues returned to the City as a result of Recipient’s expanded operation will exceed the amount of EDIP funds provided in thirty-six (36) months, and/or
- (ii) For \$556,000.00 of the award: for every one dollar (\$1.00) in EDIP funds provided, Recipient will spend at least twenty-five and 00/100 dollars (\$25.00) in new capital investment, and/or
- (iii) For the remaining \$944,000.00 of the award: for every One Thousand Five Hundred Eighty-one and 24/100 dollars (\$1,581.24) in EDIP funds provided to the Recipient will create and/or retain at least one (1) new "full-time equivalent" employment opportunity in its operation, with an average salary of \$55,001.00 to \$75,000.00, excluding benefits.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY:

1. That the Authority hereby finds:

- (a) that the provision of \$1,500,000.00 in EDIP funds to ZIM American Integrated Shipping Services Company, LLC, a New York limited liability company, authorized to transact business in Virginia (the "Recipient") will primarily serve the valid public purpose of fostering and stimulating economic development in the City; and
- (b) that the provision of the EDIP funds is in furtherance of the purposes for which the Authority was created; and
- (c) that it is unlikely the Recipient would expand its operation within the City without the stimulus of the EDIP award.

2. That the Authority hereby further finds that, based on the direct benefits to the City of Virginia Beach and its citizens resulting from the capital investment and employment opportunities to be generated by the Recipient as a result of its proposed expansion of its operation in Virginia Beach, the provision of \$1,500,000.00 in EDIP funds to the Recipient will only incidentally enure to the benefit of private interests.

3. That as of the date of this Resolution, the Recipient has not yet commenced construction of the proposed improvements or filled any of the new full-time job positions being incentivized by this EDIP award..

4. That based on these findings, the Authority hereby approves the provision of \$1,500,000.00 in EDIP funds to the Recipient to underwrite a portion of the costs associated with the expansion and relocation of the Recipient's operation in Virginia Beach, with \$556,000.00 of the award to be based on capital investment and \$944,000.00 based on creation and/or retention of new employment opportunities.

5. That disbursement of EDIP Funds by the Authority shall be at the discretion of the Director of the Department of Economic Development of the City of Virginia Beach or his designee (the "Director"), who shall be authorized to require appropriate verification as to qualifying expenditures.

6. That disbursement of EDIP funds to the Recipient shall be on a pro-rata reimbursement basis upon presentation of original receipts for qualifying expenditures to the Director with not more than \$556,000.00 to be disbursed for capital investment and not more than \$944,000.00 to be dispersed for creation of employment opportunities. At the sole discretion of the Director, disbursement may not be prior to the completion of the Employment Opportunity Performance Criteria. Disbursement of EDIP funds shall be from time to time, but not more frequently than once per month, until fully expended.

7. That as a condition of receiving EDIP funds related to the employment opportunities incentivized by this award, once a new full-time job is filled, it must be maintained without interruption for thirty-six (36) months from the date of this Resolution (the "Performance Period") or the funds advanced for that job may be subject to recapture as set forth in Section 8, below.

8. The Director may require the Recipient to enter into a Recapture Agreement approved by the Director to allow for the recapture of funds for any job incentivized that is subsequently terminated or eliminated by the Recipient. Such Recapture Agreement shall provide for the repayment by the Recipient of that portion of EDIP funds so disbursed prorated for the percentage of the Performance Criteria satisfied prior to the expiration of the Performance Period, and shall contain certain other provision as may be determined or required by the Director. Should an individual job be vacant but Recipient is actively seeking a replacement employee, EDIP funds advanced for that position shall not be subject to recapture.

9. As a further condition of receiving the EDIP Funds, the Recipient shall conduct operations in the building at the Property (or such other locations in the City of Virginia Beach as may be agreed to by the Authority) for a minimum of five (5) years from the time of this award. Even if the requirement of paragraph 1 is met, for each year less than five that the Recipient conducts operations at the Property (or other agreed to location) upon written request from the Authority, the Recipient shall pay to the Authority, as EDIP recapture and not as a penalty, one-fifth (1/5) of the amount of the EDIP Funds provided. Such amount shall be paid within fifteen (15) business days after receipt of request from the Authority, and if not paid by such date, the amount due will bear interest at the rate of ten percent (10%) per annum from such date until paid, and such interest shall be payable by the Recipient in addition to the amount due as calculated above.

10. The Authority may terminate this award and decline to pay any unpaid funds if the recipient has not requested the full \$1,500,000.00 within thirty-six (36) months of the date of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

Adopted this 20th day of June, 2023, by the City of Virginia Beach Development Authority.


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DEVELOPMENT AUTHORITY

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