

Prepared by: Jones, Blechman, Woltz & Kelly, P.C.  
701 Town Center Dr., Suite 800  
Newport News, VA 23606  
Attn: Raymond H. Suttle, Jr.

Return to: Office of the City Attorney  
22 Lincoln Street  
Hampton, VA 23669

LSRN: 3003904 and portion of 3003903

### **PROFFER AGREEMENT**

THIS PROFFER AGREEMENT (“Agreement”) made as of April 6, 2015, by and between **TODD SHOPPING CENTER, L.L.C.**, a Virginia limited liability company (index as a grantor); and **THE CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (index as a grantee), with an address of 22 Lincoln Street, Hampton City Hall, Hampton, VA 23669.

### **RECITALS**

- A. Todd Shopping Center, L.L.C. (“Todd”) is the owner of two parcels of real property (the “Property”) located at the corner of Todds Lane and Aberdeen Road in Hampton, Virginia, LSRN 3003904 and LRSN 3003903, with addresses of 1700 Todds Lane and 2300 W. Mercury Boulevard, Hampton, Virginia 23666, which is more fully described on Exhibit A attached hereto and is a portion of Todd Shopping Center.
- B. Todd has initiated a conditional amendment to the zoning map of the City of Hampton, Virginia (the “City”) by petition addressed to the City so as to change the zoning classification of a portion of the Property from Limited Commercial (C-2) District to General (C-3) District. Todd Shopping Center is comprised of approximately 27.309 acres. The portion of the property subject to the application for

re-zoning is approximately 3.13 acres. Upon the application for re-zoning being accepted, the parcel subject to the re-zoning will be subdivided and become a separate parcel from the larger shopping center parcel as depicted on that certain plat entitled, "E-Commerce Center of Hampton, Proposed Parcel For Rezoning", dated 06/08/2015.

- C. Todd has requested approval of this Proffer Agreement.
- D. The policy of the City is to provide for the orderly development of land for various purposes, including commercial purposes, through zoning and other land development legislation.
- E. Todd desires to offer the City certain conditions for the enhancement of the community and provide for the highest quality and orderly development of the Property.
- F. The conditions outlined in this Agreement have been proffered by Todd and allowed and accepted by the City as a part of the amendment of the City Zoning Ordinance and the Zoning Map. These conditions shall continue in full force and effect until a subsequent amendment changes the zoning of the Property; provided, however, that such conditions shall continue if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance of the City.

NOW, THEREFORE, for and in consideration of the approval and acceptance by the City of this Proffer Agreement, Todd agrees that it will meet and comply with all of the following conditions in developing the Property. In the event the requested change of zoning classification is not granted by the City, these Proffers shall thereupon become null and void.

Todd, its successors, assigns, grantees and other successors in title or interest to the Property, voluntarily and without any requirement by or exaction from the City or its governing body and without any element or compulsion or quid pro quo for zoning, re-zoning, site plan, building permit or subdivision approval, make the foregoing declaration of conditions and restrictions governing the use and physical development and operation of the Property, and covenant and agree that this declaration and the further terms of this Agreement shall constitute covenants running with the Property, which shall be binding upon the Property, and upon all persons and entities claiming under or through Todd, its successors and assigns, grantees and other successors in interest or title to the Property.

### **CONDITIONS**

1. The only permitted use of the Property shall be a mixture of self-storage facility, retail and office, together with all associated uses. The e-commerce center shall incorporate all three uses and will operate together. Under no circumstances shall the self-storage exceed 75% of the total building square footage.
2. If the rezoning application is approved by City Council, the Property shall be subdivided in accordance with that certain plat entitled, "E-COMMERCE CENTER OF HAMPTON, PROPOSED PARCEL FOR RE-ZONING", dated 06/08/2015 to create the 3.13 acre parcel referred to in Recital B hereof, a copy of which is on file with the Planning and Zoning Administration Division of the Community Development Department and has been exhibited to the Planning Commission and the Hampton City Council for illustrative purposes and to provide justification for this re-zoning action. Changes in the proposed subdivision as shown on the plat may be made to accommodate environmental, engineering, architectural, topographic or other

development conditions, or subdivision approval requirements as required by law and subject to the approval of the Director of Community Development. A copy of the final approved subdivision plat shall be placed in the file with the Planning and Zoning Administration Division of the Department of Community Development and shall supersede any previously filed conceptual subdivision plat.


3. The site shall be developed in substantial conformance with the conceptual site plan entitled, "E-COMMERCE CENTER OF HAMPTON CONCEPT SITE PLAN", revised 5/14/2015 and dated 6/10/2015, prepared by PMA Architecture (the "Conceptual Site Plan"), a copy of which is on file with the Planning and Zoning Administration Division of the Community Development Department and has been exhibited to the Planning Commission and the Hampton City Council for illustrative purposes and to provide justification for this re-zoning action. Any significant changes in the conceptual site plan may be made to accommodate environmental, engineering, architectural, topographic or other development conditions, or site plan approval requirements as required by law and subject to the approval of the Director of Community Development. A copy of the final approved site plan shall be placed in the file with the Planning and Zoning Administration Division of the Department of Community Development and shall supersede any previously filed conceptual site plan.
4. The building shall be constructed in substantial conformance with the elevations entitled "E-COMMERCE CENTER OF HAMPTON, OFFICE-SHIPPING-STORAGE", prepared by PMA Architecture and dated 5/05/2015, copies of which are on file with the Planning and Zoning Administration Division of the Community

Development Department and have been exhibited to the Planning Commission and the Hampton City Council for illustrative purposes and to provide justification for this re-zoning action.

5. Proposed primary building materials shall consist of pre-cast concrete, brick, aluminum, metal panels, and/or glass. EFIS shall be limited to secondary and/or accent materials.
6. The storage units shall be used only for storage of non-hazardous materials.
7. There will be no storage outside the building. Access to all storage units shall occur within the enclosed building.
8. There shall be a landscaped buffer along the northerly and western property lines as depicted on the Conceptual Site Plan.
9. Todd acknowledges that further lawful conditions and restrictions against the Property may be required by the City during the detailed site plan review and administration of applicable codes and regulations of the City by all appropriate agencies and departments of the City, which shall be observed or performed by Todd. Todd further acknowledges that additional further lawful conditions or restrictions may be imposed by the City as a condition of approvals, including, but not limited to, final site plan approval.
10. All references hereinabove to zoning districts and to regulations applicable thereto, refer to the City Zoning Ordinance of the City of Hampton, in force as of the date the conditional re-zoning amendment is approved by the City.
11. Todd covenants and agrees that (1) the Zoning Administrator of the City of Hampton, Virginia shall be vested with all necessary authority on behalf of the governing body

of the City of Hampton, Virginia, to administer and enforce the foregoing conditions and restrictions specified in this Agreement, including (i) the ordering in writing of the remedying of any non-compliance with such conditions, and (ii) the bringing of legal action or suit to ensure compliance with such conditions, including mandatory or prohibitory injunction, abatement, damages or other appropriate action, suit or proceedings; (2) the failure to meet all conditions shall constitute cause to deny the issuance of any of the required building or occupancy permits as may be appropriate; and (3) the Zoning Map shall show by an appropriate symbol on the Map the existence of conditions attaching to the zoning of the subject Property on the Map and that the ordinance and conditions may be made readily available and accessible for public inspection in the office of the Zoning Administrator and in the Planning Department and that this Agreement shall be recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia and indexed in the names of Todd and the City.

WITNESS the following signatures:

TODD SHOPPING CENTER, L.L.C.  
By  \_\_\_\_\_  
Manager

STATE OF VIRGINIA  
CITY OF NEWPORT NEWS, to-wit:

The foregoing was acknowledged before me this 6<sup>th</sup> day of April, 2015 by Robert L. Freeman, Jr., Manager, Todd Shopping Center, L.L.C.

My commission expires: 3/31/18  
Registration Number: 208708



 \_\_\_\_\_  
Notary Public

568917

## EXHIBIT A

### Legal Description

#### PARCEL A

All those certain lots, pieces or parcels of land situate, lying and being in the City of Hampton, Virginia, designated "Parcel-I, 21.43 Acres"; "Parcel-II, 5.54 Acres"; and "Parcel-III, 0.517 AC."; as shown on that certain plat entitled, "HAMPTON, VIRGINIA PLAT SHOWING PARCEL-I, PARCEL-II & PARCEL-III, BEING THE LAND COMPRISING TODD CENTER", dated April 1, 1971 and prepared by William M. Sours – Surveyor, said plat being of record in Deed Book 455, page 744, in the Office of the Clerk of the Circuit Court for the City of Hampton, Virginia, to which reference is here made.

#### PARCEL B

All those certain lots, pieces or parcels of land situate, lying and being in the City of Hampton, Virginia, designated "Lot-1, 1329 sq. ft." and "Lot 2, 229 sq. ft.", as shown on that certain plat entitled, "HAMPTON, VIRGINIA, Plat of Lots-1 & 2; Property of the C & P Tel. Co.", dated June 30, 1986 and prepared by William M. Sours – Surveyor, a copy of said plat being attached hereto and made a part hereof.

This parcel is a portion of the parcel of land located in Hampton, Virginia known as Todd Shopping Center and as designated on the attached in the hatched area. The parcel shall be subdivided upon a successful re-zoning and granting of a Use Permit.

Property Address: 1700 Todds Lane and 2300 W. Mercury Boulevard, Hampton, VA 23666









NOTE: ALL DIMENSIONS ARE APPROXIMATE AND BASED ON THE CONCEPTUAL LAYOUT

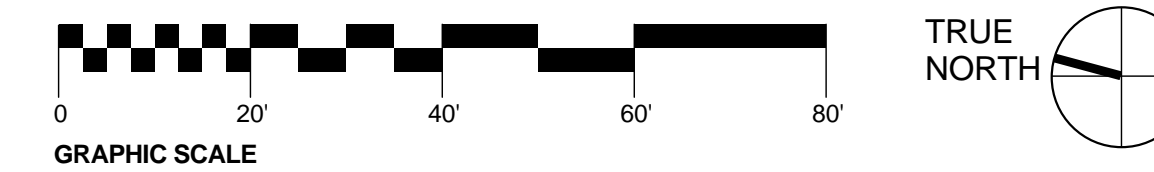


TABLE OF AREAS	
GROSS BUILDING FLOOR AREA	94,936 SF
FIRST FLOOR	31,724 SF
SECOND FLOOR	31,606 SF
THIRD FLOOR	31,606 SF
USAGE AREA	
OFFICES	19,337 SF
STORAGE	70,949 SF
RETAIL	4,650 SF
STORAGE UNITS	429
SITE AREA PROPOSED FOR REZONING	3.13 ACRES
PARKING AREA	70,914 SF
PARKING SPACES	111 SPACES
MIN. PARKING SPACES REQUIRED (OFFICE, STORAGE, AND RETAIL)	83 SPACES
LANDSCAPE AREA	24,468 SF (18% OF TOTAL SITE)
SIDEWALK AREA	5,803 SF





**E-COMMERCE CENTER OF HAMPTON**  
 OFFICE | SHIPPING | STORAGE - REVISED 5.5.2015



## TITLE CERTIFICATION AND LIEN DISCLOSURE

### **RPC #3003904 and Portion of 3003903**

The undersigned, attorney for the owner of the property located at the corner of Todds Lane and Aberdeen Road in Hampton, Virginia, identified as Tax Parcel Number 3003904 and a portion of 3003903 (the "Property") to be rezoned, hereby certifies, as required by §24-3(5) of the Zoning Ordinance of the City of Hampton, Virginia, that title to the Property is in the name of: Todd Shopping Center, L.L.C.

The Property is derived from and part of the property described as follows:

#### PARCEL A

All those certain lots, pieces or parcels of land situate, lying and being in the City of Hampton, Virginia, designated "Parcel-I, 21.43 Acres"; "Parcel-II, 5.54 Acres"; and "Parcel-III, 0.517 AC."; as shown on that certain plat entitled, "HAMPTON, VIRGINIA PLAT SHOWING PARCEL-I, PARCEL-II & PARCEL-III, BEING THE LAND COMPRISING TODD CENTER", dated April 1, 1971 and prepared by William M. Sours – Surveyor, said plat being of record in Deed Book 455, page 744, in the Office of the Clerk of the Circuit Court for the City of Hampton, Virginia, to which reference is here made.

#### PARCEL B

All those certain lots, pieces or parcels of land situate, lying and being in the City of Hampton, Virginia, designated "Lot-1, 1329 sq. ft." and "Lot 2, 229 sq. ft.", as shown on that certain plat entitled, "HAMPTON, VIRGINIA, Plat of Lots-1 & 2; Property of the C & P Tel. Co.", dated June 30, 1986 and prepared by William M. Sours – Surveyor, a copy of said plat being attached hereto and made a part hereof.

The Property is a portion of the parcel of land located in Hampton, Virginia known as Todd Shopping Center. The Property shall be subdivided upon a successful re-zoning and granting of a Use Permit.

I further certify that the following are the only title exceptions other than typical utility easements:

1. Deed of Trust and Security Agreement between Todd Shopping Center, L.L.C. to Lesley E. Daigle, Trustee, dated November 10, 2005 and recorded in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia as Instrument Number 050030657, securing Prudential Mortgage Capital Company, LLC in the original sum of \$9,200,000.00.

Dated: June 4, 2015

JONES, BLECHMAN, WOLTZ & KELLY, P.C.

By 

---

Raymond H. Suttle, Jr.  
Jones, Blechman, Woltz & Kelly, P.C.  
701 Town Center Dr., Suite 800  
Newport News, VA 23606  
Telephone: 757-873-8006

573107