

Prepared by:  
Kaufman & Canoles, P.C.  
11815 Fountain Way, Suite 400  
Newport News, VA 23606

After recording return to:  
Office of the City Attorney  
22 Lincoln Street  
Hampton, VA 23669

LRSN: 12005714

### **PROFFER AGREEMENT**

**THIS PROFFER AGREEMENT** (“Agreement”) made this 20<sup>th</sup> day of April, 2017, by and between **AH&H CORP.**, a Virginia corporation (“AH&H”) (index as Grantor); **MARLYN DEVELOPMENT CORPORATION**, a Virginia corporation (“Marlyn”) (index as Grantor); and **THE CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia (the “Grantee”), with an address of 22 Lincoln Street, Hampton City Hall, Hampton, Va. 23669.

### **RECITALS**

A. AH&H is the owner of a certain parcel of property located in the City of Hampton, commonly known as 1300 N. Mallory Street, Hampton, VA 23663, designated as LRSN Number 12005714, and more fully described on “Exhibit A” (the “Property”).

B. Marlyn and AH&H (collectively, “Grantor”) intend to create a joint venture to develop the Property.

C. Grantor has initiated a conditional amendment to the zoning map of the City of Hampton, Virginia, by petition addressed to the Grantee so as to change the zoning classification of the Property from Multifamily Residential District 4 (MD-4), in part, and One Family Residential District 11 (R-11), in part, to exclusively One Family Residential District 4 (R-4).

D. Grantor has requested approval of this Agreement.

E. Grantee’s policy is to provide for the orderly development of land for various purposes, including commercial purposes, through zoning and other land development legislation.

F. Grantor desires to offer the City of Hampton certain conditions for the enhancement of the community and to provide for the highest quality and orderly development of the Property.

G. The conditions outlined in this Agreement have been proffered by Grantor and allowed and accepted by Grantee 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 Grantee.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the approval and acceptance by the City of Hampton, (the "City") of this Agreement, Grantor 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. Grantor, its heirs, successors, assigns, grantees and other successors in title or interest to the Property, voluntarily and without any requirement by or exaction from Grantee or its governing body and without any element or compulsion or quid pro quo for zoning, rezoning, site plan, building permit or subdivision approval, makes the foregoing declaration of conditions and restrictions governing the use and physical development and operation of the Property, and covenants and agrees 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 the Grantor, its heirs successors and assigns, grantees and other successors in interest or title to the Property; namely:

### **CONDITIONS**

1. The only permitted use of the Property shall be single family residential use together with all accessory uses.
2. The Property shall be developed in substantial conformance with the conceptual site plan entitled "Shelton on the Bay: Concept Subdivision Plan," dated November 2, 2016, last revised April 18, 2017, and prepared by Vanasse Hangen Brustlin, Inc. (the "Master Plan"), a copy of which is on file with 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 rezoning action. Significant changes in the Master Plan may be made to accommodate environmental, engineering, architectural, topographic or other development conditions, or site/subdivision plan approval requirements as required by applicable law and/or regulations and subject to approval of the Director of Community

Development for consistency with the terms of this proffer. A copy of the final approved Master Plan shall be placed in the file with the Planning Division of the Department of Community Development and shall supersede any previous filed conceptual site plan.

3. There shall be a maximum of 41 residential dwelling units constructed on the Property.
4. The residential dwelling units shall be constructed in substantial conformance with the elevations entitled "SHELTON ON THE BAY 1300 N. Mallory Street Hampton, Virginia ELEVATIONS", dated November, 2016, submitted by AH&H and Marlyn, copies of which are on file with the Community Development Department which elevations have been exhibited to the Planning Commission and the Hampton City Council for illustrative purposes and to provide justification for this rezoning action.
5. The following additional, specific conditions shall apply to the Property:
  - a. The subdivision, the lots and all residential dwelling units shall be designed and constructed to comply with all requirements of the One Family Residential District 9 (R-9) rather than the One Family Residential District 4 (R-4), with the sole exception that the minimum front yard setback shall be twenty feet (20') rather than thirty feet (30').
  - b. The exteriors of all four (4) sides of the residential dwelling units will be constructed primarily using one or more of the following premium vinyl siding products: panel thickness of .044" lap siding, .048" board and batten siding, and .100" shingle siding. All of these materials will have a wind rating from 175 mph to 210 mph. Such premium vinyl siding shall be installed to minimize seams or bowing and shadowing at the seams.
  - c. The roofs of the buildings will be constructed of thirty (30) year architectural shingles and/or standing seam metal.
  - d. All exterior lighting shall comply with the "City of Hampton Outdoor Lighting Policy and Procedures", and shall consist of full cut-off fixtures that are directed downward and inward to the Property.
  - e. All garage doors shall include windows and decorative hardware.

- f. A minimum of fifty percent (50%) of the residential dwelling units shall have a front porch.
  - g. All lots fronting on Mallory Street shall have only rear loaded garages.
  - h. No two (2) residential dwelling units with the same front elevation or color scheme shall be located next another or directly across the street from one another.
  - i. There shall be at least one street tree installed for each residential dwelling unit on the Property.
  - j. Sidewalks shall be installed on both sides of all new roads.
  - k. All building foundations will be elevated to provide a minimum of two (2) steps/risers from the finish grade to front porch or stoop.
  - l. Access between the Property and Tulip Street will be restricted to emergency vehicles only by means of a barrier and right-of-way design acceptable to the Hampton Fire Department.
6. Grantor (including their successors, assigns, or agents) shall make a good faith effort to install a mulch waterside walking trail leading from the developed portion of the site to Mill Creek for use by the residents of the development.
- a. For purposes of this Agreement, a good faith effort shall mean that, prior to issuance of the first certificate of occupancy for a unit intended for sale to a third party, Grantor shall prepare and submit bona fide plans for the trail to all federal, state, and local agencies as may be necessary to comply with environmental and other development regulations. A good faith effort also shall mean that if its plans are rejected and can be remediated, Grantor shall redesign the trail so that it complies with all laws or regulations that were the basis of the rejection and resubmit plans for approval. If the trail is not legally permissible under any circumstance due to applicable environmental and other development regulations Grantor shall not be considered to be in violation of this Agreement if the trail is not installed. A copy of all plans prepared and submitted for approval by Grantor pursuant to this condition shall be provided to the City upon request.

- b. Prior to and as a condition to issuance of the first certificate of occupancy for a unit intended for sale to a third party, Grantor (i) shall establish a homeowner's association applicable to the entire Property, (ii) shall pay to the homeowner's association \$10,000 for either maintaining the trail or installing an observation platform along the trail, and (iii) shall provide the City Attorney with a bank statement for the association reflecting receipt of the aforementioned \$10,000 payment.
7. It is understood that all phases of the proposed project shall comply with all ordinances of the City of Hampton.
8. Further lawful conditions or restrictions against the Property may be required by Grantee during the detailed Subdivision Plan review and administration of applicable codes and regulations of Grantee by all appropriate agencies and departments of Grantee, which shall be observed or performed by Grantor. Grantor acknowledges that additional further lawful conditions or restrictions may be imposed by Grantee as a condition of approvals, including but not limited to final subdivision plan approval.
9. 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 rezoning amendment is approved by the Grantee.
10. The Grantor 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 noncompliance 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 Department of Community Development 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 name of the Grantor and Grantee.

11. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of this Agreement shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, subparagraph, section, subsection or provision hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, subparagraph, section, subsection or provision hereof.

WITNESS the following signatures:

[Signatures located on the following pages]

[Signature Page to Proffer Agreement]

Grantor:

AH&H CORP.

By: James F. Huff  
James F. Huff, President

STATE OF VIRGINIA

City of Hampton, to-wit:

I, Frances Shaw Glenn, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that James F. Huff, whose name is signed to the foregoing instrument as President of AH&H Corp., a Virginia corporation, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 28<sup>th</sup> day of April, 2017 on behalf of said corporation. He  is personally known to me or  has produced \_\_\_\_\_ as identification.

Frances Shaw Glenn  
Notary Public

My commission expires: 3/31/2021  
Registration No. 307586



[Signature Page to Proffer Agreement]

Grantor:

MARLYN DEVELOPMENT CORPORATION

By: M. David Jester

Name: M. DAVID JESTER

Title: PRESIDENT

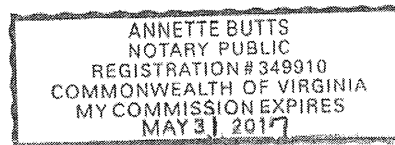
STATE OF VIRGINIA

City of Virginia Beach, to-wit:

I, Annette Butts, the undersigned, a Notary Public in and for the City/County and State aforesaid, do hereby certify that M. David Jester, whose name is signed to the foregoing instrument as President of Marlyn Development Corporation, a Virginia corporation, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 28<sup>th</sup> day of April, 2017 on behalf of said corporation. He  is personally known to me or  has produced \_\_\_\_\_ as identification.

Annette Butts  
Notary Public

My commission expires: 5/31/2017  
Registration No. 349910





**Exhibit A**  
**Legal Description**

All that certain tract, piece or parcel of land, situated, lying and being in the City of Hampton, (formerly Chesapeake Magisterial District, Elizabeth City County), containing ten and one-half (10 1/2) acres, more or less, and located on the easterly side of the public highway leading from Phoebus to Buckroe Beach. The said property being the remainder of the land owned by Mary S. Sweeny, widow, out of the estate of Charles C. Shelton, deceased, by will duly probated in the Clerk's Office of the Circuit Court of Hampton (formerly Elizabeth City), Virginia, in Will Book 3, at page 76; by deed dated November 2, 1911, and recorded in the aforesaid Clerk's Office in Deed Book 53, at page 277, from C. W. Shelton to Mary S. Williams, and also by deed dated January 5, 1912, recorded in the aforesaid Clerk's Office in Deed Book 53, at page 347, from Henry O. Shelton and J. St. Clair Shelton to Mary S. Williams.

**LESS AND EXCEPTING** that portion of the above described property which was conveyed to the Commonwealth of Virginia for widening of Mallory Street by Deed of Mary S. Sweeny dated February 13, 1948, and recorded in the aforementioned Clerk's Office in Deed Book 160, page 161.