

Prepared by:
WYTHE ELEMENTARY SCHOOL, LLC
c/o John Garland
416 Campbell Ave, Suite 103
Roanoke, VA 24016

After recording return to:
Office of the City Attorney
22 Lincoln Street
Hampton, Va. 23669
(bnb)

[Portions of LRSNs: 1005036 1004555, and 1004553]

PROFFER AGREEMENT

THIS PROFFER AGREEMENT (“Agreement”) made this ____ day of _____, 2018, by and between WYTHE ELEMENTARY SCHOOL, LLC (the “Grantor”); the CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia (the “City”), Grantor for recording purposes only; 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. Grantor is or will become the owner of the following parcels, rights-of-way, and portions thereof which collectively constitute approximately 57,322+/- square feet and 1.316+/- acres (the “Wythe School Site” or the “Property”), including: (1) a portion of City owned right-of-way known as Hampton Drive, (2) a City owned alley/right-of-way, (3) a portion of a City-owned parcel known as 200 Claremont Avenue (LRSN 1005036), and (4) a portion of a City-owned parcel known as 235 Catalpa Avenue (LRSN 1004553), all of which is further depicted and described on the attached Exhibit A.

- B. 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 R-11 to MD-4.
- C. Grantor has requested approval of this Agreement.
- D. 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.
- E. 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.
- F. 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.

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

- A) The only permitted use of the Property shall be a multifamily dwelling with approximately 40 units together with all customary accessory uses, including but not limited to a community room.
- B) The Property shall be developed in substantial conformance with the proposed conceptual site plan entitled “CONCEPTUAL SITE LAYOUT PLAN OF THE WYTHE ELEMENTARY SCHOOL” dated September 28, 2018, prepared by John Garland (“The Conceptual Site Plan”), 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 to the Conceptual Site Plan may be made to accommodate environmental, engineering, architectural, topographic or other development conditions, or site plan and subdivision 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 Division of the Department of Community Development and shall supersede any previously filed conceptual site plan or plat. With respect to this condition, Grantor acknowledges that one or more conditions shown on the Conceptual Site Plan are not consistent with what is required by the Zoning Ordinance under the proposed MD-4 district, and, in order to be permissible, a variance must be obtained from the Board of Zoning Appeals. Approval of the rezoning and this Agreement shall not vest the Grantor in the development as shown on the Conceptual Site Plan or guarantee approval of any variances. A copy of the final approved site plan shall be placed in the file with the Community Development Department and shall supersede any previously filed conceptual site plan.

- C) All renovations to the interior and exterior of the existing school building on the Property shall meet the Standards for Rehabilitation published by the Secretary of the U.S. Department of the Interior under the authority of the federal Historic Preservation Tax Incentives Program (36 CFR § 46 et. seq.), including but not limited to maintaining the exterior glazed ovals, “Enter to Learn, Leave to Serve” signage, glazed tile entries, and retaining and restoring part of the main “gymnasium”. All exterior improvements or alterations to the existing school building, including but not limited to signage, shall be submitted to the City for pre-approval to ensure consistency with the goals and objectives of the Community Plan and historic character of the building.
- D) Further lawful conditions or restrictions against the Property may be required by Grantee during the detailed Site 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 site plan approval.

- E) 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.
- F) 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.

WITNESS the following signatures:

[SIGNATURES ON FOLLOWING PAGES]

WYTHE ELEMENTARY SCHOOL, LLC

Grantor:

John Garland
By: JOHN A. GARLAND

STATE OF VIRGINIA
City of Hampton, to-wit:

I, Karen W. Blankenship, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that John A. Garland, whose name is signed to the foregoing instrument as (title) Manager of Wythe Elementary School, LLC a Virginia (type of entity) LLC, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 5th day of October, 2018 on behalf of said Wythe Elementary School, LLC. He/she is personally known to me or has produced _____ as identification.

KAREN W. BLANKENSHIP
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
REGISTRATION #309207
MY COMMISSION EXPIRES DECEMBER 31, 2021

Karen W. Blankenship
Notary Public

My commission expires: December 31, 2021
Registration No. 309207

CITY OF HAMPTON, VIRGINIA

Grantor:

By: _____

STATE OF VIRGINIA
City of Hampton, to-wit:

I, _____, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that _____, whose name is signed to the foregoing instrument as (title) _____ of _____, a Virginia (type of entity) _____, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this ____ day of _____, 20__ on behalf of said _____. He/she is personally known to me or has produced _____ as identification.

Notary Public

My commission expires: _____
Registration No. _____

Exhibit A

Legal Description