

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

LRSN: 2000006; 1540 W. Queen St
2000007; 1538 W. Queen St
2000008; 1534 W. Queen St

PROFFER
AGREEMENT

THIS PROFFER AGREEMENT ("Agreement") made this _____ day of _____, _____, by and between OLD TOWN

DEVELOPMENT, LLC, a Virginia limited liability company (the "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. Old Town Development, LLC is the owner of a certain parcel of property located in the city of Hampton, herein known as LRSN Number 2000006, also known as 1540 W Queen Street ("Parcel 1").
- B. Old Town Development, LLC is the owner of a certain parcel of property located in the City of Hampton, herein known as LRSN Number 2000007, also known as 1538 W Queen Street ("Parcel 2").
- C. Old Town Development, LLC is the owner of a certain parcel of property located in

the City of Hampton, herein known as LRSN Number 2000008, also known as 1534 W Queen Street (“Parcel 3”).

- D. Parcel 1, Parcel 2 and Parcel 3 (collectively, the “Property”) are more particularly described on the attached Exhibit A.
- E. Grantors have 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, as follows:
 - 1. Grantor proposes to change the zoning of Parcel 3, commonly known as 1534 W. Queen Street, from One-Family Residential District (R-13) to Multifamily Residential District MD-4.
 - 2. Parcels 1 and 2, commonly known as 1538 and 1540 West Queen Street, were previously rezoned to MD-4 District subject to that Proffer Agreement dated December 9, 2020 and recorded among the land records of the Clerk of Circuit Court for the City of Hampton on December 10, 2020 as instrument # 200018243 (the “2020 Proffer”). Grantor proposes to retain the MD-4 zoning designation, but to amend the zoning of Parcels 1 and 2 to provide that this Agreement supersedes and extinguishes the 2020 Proffer.
- F. Grantors have requested approval of this Agreement.
- G. 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.
- H. Grantors 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.

- I. The conditions outlined in the 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 the Agreement, the Grantors agree 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. Grantors, their 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 Grantors, their heirs, successors and assigns, grantees and other successors in interest or title to the Property; namely:

CONDITIONS

- 1) The use of the Property shall be limited to one (1) multi-family building which shall be a maximum of four (4) stories in height and shall contain a total of sixty-eight (68) units; or such number of units as approved by the Community Development Director

or their designee.

- 2) The Property shall be combined into a single parcel, subject to approval by the City of Hampton and recordation of a boundary line vacation plat, which shall be in substantial conformance with that certain plat entitled, "PLAT SHOWING PROPERTY OF OLD TOWN DEVELOPMENT LLC AT 1534 and 1538 W. QUEEN STREET AND ROB THE BUILDER INC AT 1540 W. QUEEN STREET CITY OF HAMPTON, VIRGINIA," prepared by Landtech Resources, Inc., dated October 22, 2025, (the Community Development Department, Planning and Zoning Administration Division "Plan"), a copy of which is on file with the Planning and Zoning 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 the re-zoning action. Changes to the Plan 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 plan shall be placed in the file with the Planning and Zoning Division of the Department of Community Development and shall supersede any previously held conceptual subdivision plan.
- 3) The Property shall be developed in substantial conformance with the conceptual site plan entitled "WEST QUEEN STREET DEVELOPMENT", dated October 22, 2025, prepared by Landtech Resources, Inc. (the "Conceptual Site 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. Minor changes in the

Conceptual Site Plan may be made to accommodate environmental, engineering, architectural, topographical, 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 Conceptual 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.

- 4) Grantors (including their successors, assigns, or agents) shall make a good faith effort to install a mulch walking trail, together with a kayak launch at its termination, in the area between the developed portion of the site and Newmarket Creek. For purposes of this Agreement, a good faith effort shall mean that, prior to issuance of the first certificate of occupancy, Grantors shall prepare and submit bona fide plans for the walkway and kayak launch to all federal, state, and local agencies as may be necessary to comply with environmental and other development regulations. A good faith effort shall also mean that if its plans are rejected and can be remediated, Grantors shall redesign the walkway and/or kayak launch so that it complies with all laws or regulations that were the basis of the rejection and resubmit plans for approval. Upon approval of the plans, Grantor's failure to commence construction of the trail or kayak launch before any such approval expires shall constitute a violation of this Agreement. If the walkway and/or kayak launch are not legally permissible under any circumstance due to applicable environmental and other development regulations, Grantors shall not be considered to be in violation of this Agreement if the walkway and/or kayak launch are not installed. A copy of all plans prepared and submitted for approval by Grantors pursuant to this condition shall be provided to the City upon request.

- 5) Prior to final site plan approval for development of the Property, a landscape plan shall be submitted for review and approval by the Director of Community Development or their designee meeting the requirements of the City of Hampton Landscape Guidelines. The landscape

plan shall be consistent with the following criteria:

- a. The landscape plan shall comply with the Concept Plan.
 - b. The landscape plan shall be in conformance with the City of Hampton Landscape Guidelines;
 - c. A minimum of 75% of the proposed landscaping should be native species to Southeastern Virginia, as specified in the “Native Plants for Southeast Virginia including Hampton Roads Region” guidebook, on file with the Planning and Zoning Division. The remaining

landscaping shall be species native to USDA Hardiness Zone 8a or 8b, which are suited for future climate change conditions;
 - d. Street trees shall be provided and maintained along West Queen Street as follows: one (1) street tree shall be planted along the street, planted every thirty-five (35’) to forty (40’) feet on center. The street trees shall include a mix of plant species (not less than 2 species)

to promote a hearty landscape and visual interest. Large canopy trees that provide shading for sidewalk canopy coverage at maturity shall be used as street trees;
 - e. Vegetative screening area along the outmost eastern and western boundaries that abut residentially zoned and/or developed properties shall include a mixture of evergreen and deciduous canopy trees, understory trees, and shrubs;
- 6) Ground mounted HVAC systems shall be screened from the right-of-way and adjacent properties through the use of landscaping or fencing.
- 7) The buildings shall be constructed in substantial conformance with the elevations entitled “WEST QUEEN STREET”, dated May 26, 2025, prepared by J. Bengtson, Land Planning Solutions, copies of which are on file with 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 rezoning action. Minor changes in the Elevations may be made to accommodate

environmental, engineering, architectural, topographical, or other development conditions, subject to the approval of the Director of Community Development. A copy of the final approved Elevations shall be placed in the file with the Planning Division of the Department of Community Development and shall supersede any previously filed elevations.

- 8) Construction of the buildings shall be as follows:
 - a. Primary building material for each building exterior will be full faced brick veneer and horizontal fiber cement board siding, supplemented with fiber cement board & batten and shake siding accents and fiber cement board trim and/or PVC trim.
 - b. Each building will have 30-year architectural shingles.
 - c. Each building will have standing seam metal accent roofs.
- 9) Acceptable fencing materials shall be PVC, wood composite, and/or decorative metal pickets. Other suitable fencing materials complementary to the building architecture may be approved by the Director of Community Development or their designee. Fencing within the front yard shall be limited to decorative black metal picket-style fencing.
- 10) The parking areas shall be landscaped and screened from the public right-of-way in accordance with the City of Hampton Landscape Guidelines as well as along the outermost eastern and western boundaries that abut residentially zoned and/or developed properties.
- 11) The dumpster enclosure, shown on the concept plan entitled “West Queen Street” and dated “October 22, 2025”, shall be fully screened from public view with an enclosure of durable materials consistent with the brick to match the building

architecture and supplemented with landscaping.

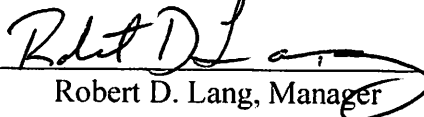
- 12) Project will include the installation of two Type 2 EV charging stations.
- 13) All exterior lighting, both site and building, shall comply with the “City of Hampton Outdoor Lighting Policy and Procedures”, shall consist of full cut-off fixtures that are directed downward and inward to the site, and shall utilize light-emitting diodes (LEDs) or such other lighting technology as may be approved by the Director of Community Development or their designee.
- 14) Development of the Property for the Apartment Units shall be designed to (a) capture stormwater runoff from the project on-site and to direct drainage internally so as to avoid directing stormwater to adjacent properties and to provide for release of such stormwater to public stormwater infrastructure or natural receiving channels on the Property that flow directly to Newmarket Creek; and (b) provide a means of conveyance and overland relief of existing off-site surface drainage onto the Property from adjacent properties to avoid creating pockets of standing water. Resilient stormwater standards related to design tidal elevation and design rainfall depths will be used to achieve these requirements, as deemed sufficient and approved by the Resilience Officer during site-plan approval, consistent with generally accepted regional stormwater standards.
- 15) It is understood that all phases of the proposed project shall comply with all the ordinances of the City of Hampton.
- 16) 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 the 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.

- 17) All reference herein 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.
- 18) 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 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 the 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:

Grantor:

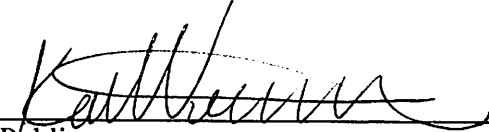
OLD TOWN DEVELOPMENT, LLC

By 
Robert D. Lang, Manager

STATE OF VIRGINIA

City of ~~Hampton~~ to-wit: KFW
Williamsburg

I, Katelin Weaver, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify the ROBERT D. LANG whose name is signed to the foregoing instrument as Manager of OLD TOWN DEVELOPMENT, LLC, a Virginia limited liability company, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this day of July 8th, 2022, KFW on behalf of the said company. He is personally known to me or has produced Virginia Drivers license as identification.


Notary Public

My commission expires: 10/31/2029

My registration number: 7753607

KATELIN R WEAVER
NOTARY PUBLIC
REGISTRATION # 7753607
COMMONWEALTH OF VIRGINIA
COMMISSION EXPIRES OCTOBER 31 2029

Exhibit A
Legal Description

PARCEL I:
1540 West Queen Street

ALL THAT certain lot, piece or parcel of land, situate, lying and being in the City of Hampton, Virginia, fronting on the North side of West Queen Street (formerly known as New Market Road) a distance of 84.5 feet, being all of parcel number four (4) as shown on that certain plat entitled, "PLAT OF LUCETTA WILLIAMS ESTATE, SITUATE AT NEW MARKET WYTHE DISTRICT, ELIZABETH CITY COUNTY, VIRGINIA," dated October 21, 1917, and made by Girard Chambers, C.E., which said plat is recorded in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia, in Deed Book 62, at Page 164, which reference is here made.

LESS AND EXCEPT that certain piece of parcel of land conveyed to the City of Hampton, Virginia, for the purpose of widening West Queen Street said instrument dated April 5, 1957 and recorded in the aforesaid Clerk's Office in Deed Book 259, Page 52, on April 9, 1957 and LESS AND EXCEPT property given to the City of Hampton recorded in the aforesaid Clerk's Office in Deed Book 597, Page 541, recorded May 27, 1981.

It being the same property conveyed unto Old Town Development, LLC by deed from Rob the Builder, Inc., dated January 9, 2026, and recorded in the aforesaid Clerk's Office at Instrument No. 260000331.

RPC: 2000006

PARCEL II
1538 West Queen Street

ALL THAT certain lot, piece or parcel of land lying, situate and being in the City of Hampton, Virginia, fronting on the Northerly side of West Queen Street a distance approximately 67.14 feet and running back therefrom in parallel, or nearly paralleled, lines to the creek; being bounded on the North by the creek; on the East by the property now or formerly of S. Hotie Mitchell, III; on the South by West Queen Street; and on the West by the property now or formerly belonging to Mewborn. Being the remainder of parcel No. 3 – Elizabeth R. Wainwright lying on the North side of the County Road (West Queen Street) as shown on a certain plat entitled "Plat of Lucetta Williams' Estate Situated at New Market, Wythe Dist. Eliz. City Co, VA." Made by Girard Chambers, Co. Surveyor, dated October 31, 1917, and recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 62, page 164. Being the undivided one-third interest in the aforesaid real estate devised unto Steven M. James under item Fourth in the Last Will and Testament of Virginia D. Mitchell dated December 11, 1975 and recorded in the aforesaid Clerk's Office in Will Book 40, page 270.

Subject to all easements and restriction of record affecting the property.

Together with all and singular the buildings and improvement thereon, rights and privileges, tenements, hereditaments, easements and appurtenances thereunto belonging or in anywise

appertaining.

It being the same property conveyed unto Old Town Development, LLC, by deed from R. Wayne Johnson, et al, dated January 20, 2015, and recorded in the aforesaid Clerk's Office at Instrument No. 150001533.

RPC: 2000007

PARCEL III:

1534 West Queen Street (consisting of two tracts)

Tract 1: THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of Hampton, Virginia and located on the northerly side of Queen Street and being more particularly described as follows: Beginning at a point which is 78.9 feet from the point on the northerly side of Queen Street, which point is formed by the intersection of the easterly boundary of the Mitchell land and the westerly boundary of the J.W. Davis land and being on a course North 71 degrees 25 minutes West from said intersection; thence from the point or place of beginning North 8 degrees 45 minutes East along the northerly side of Queen Street to a point 147.62 feet; thence North 81 degrees 15 minutes East a distance of 82.3 feet; thence south 8 degrees 45 minutes West 162 feet to the point or place of beginning.

Tract 2: ALL THAT certain tract or parcel of land, situate, in Wythe District, Elizabeth City County, Virginia, a part of the property assigned to the said Elizabeth R. Wainwright in the division of the Estate of the late Mrs. Lucetta Williams located on the Southerly side of the Sawyer's Swamp Road between Hampton and New Market, fronting thereon a distance of seventy-eight and one half (78.5) feet; and running back to the line dividing the woodland from the open land; as shown on Plat of the Estate of Mrs. Lucetta Williams, recorded in the Clerk's Office of Hampton, (formerly Elizabeth City County, Virginia), in Deed Book 62, Page I64; said parcel measuring sixty-three and three tenths (63.3) feet on the rear; but the said Elizabeth R. Wainwright expressly reserves for herself, her heirs and assign, a convenient right-of-way from the said Main County Road over the land hereby conveyed to the woodland belonging to her as shown on said Plat. PROPERTY KNOWN AS: 1534 West Queen St., Hampton, VA 23669

AND BEING the same property conveyed to Old Town Development, LLC by that Deed of Bargain and Sale from Douglas Scott Mitchell and Carol Mitchell Wolsh dated October 22, 2021 and recorded among the Clerk's office aforesaid on October 25, 2021 as Instrument No. 210021078.

RPC: 2000008