

Prepared by:

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999 Waterside Drive, Suite 1700
Norfolk, Virginia 23510

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

LRSN: 600996 and 6000997

PROFFER AGREEMENT

THIS PROFFER AGREEMENT (“Agreement”) made this _____ day of _____, 2019 by and between **EAGLE LAND, LLC**, a Virginia limited liability company (Grantor for recording purposes only), **THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON**, a political subdivision of the Commonwealth of Virginia (Grantor for recording purposes only), **RED MOON PARTNERS, 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. Grantor is or will become the owner of certain parcels of property currently or formerly owned by Eagle Land, LLC and the Economic Development Authority of the City of Hampton, subject to approval by the Economic Development Authority of the City of Hampton of a separate agreement related to the disposition of its property. Eagle Land, LLC and the Economic

Development Authority for the City of Hampton are the owners of 3200 Magruder Blvd. (LRSN 6000997) and 36 Research Drive (LRSN 6000996), respectively, which are more fully described on "Exhibit A" (the "Property").

- 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 M-1 Light Industrial to C-3 General Commercial.
- 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

1. The permitted use of the Property shall include a mixture of an indoor shooting range and storage facility, subject to securing a Use Permit for each. The indoor shooting range use includes general retail, restaurant with or without a drive thru, modeling and simulation center, cigar lounge, barber shop/beauty salon, and office, including but not limited to business uses, together with all associated uses. Self-storage shall occupy no more than 75% of the gross floor area of the building containing self-storage as shown on the Conceptual Site Plan.
2. The Property shall be combined, 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 plan entitled, "Rezoning Exhibit of the Property of the Economic Development Authority of the City of Hampton, Virginia and Eagle Land LLC," prepared by ATCS and dated 5/13/19,

(the "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 this 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 that certain plan entitled, "Conceptual Site Plan for Gunsmoke Facility & Hybrid Building," dated May 28, 2019, prepared by James River Architects (the "Conceptual Site 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 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 Division of the Department of Community Development and shall supersede any previously filed conceptual site plan.

4. The buildings and site shall be constructed and developed in substantial conformance with the Copeland Industrial Park Design Guidelines dated June 20, 2017. Proposed primary building materials (equal to or greater than 67%) shall consist of modern building materials

including: pre-cast concrete, brick, aluminum, architectural metal panels, and/or glass. EFIS shall be limited to secondary and/or accent building materials (equal to or less than 33%). Notwithstanding the foregoing, the buildings shall be in substantial conformance with the building elevations entitled, "Conceptual Site Elevations for Gunsmoke Facility," dated 28 May 2019, prepared by James River Architecture, and "Conceptual Elevations for a Hybrid Building," dated 28 May 2019, prepared by James River Architecture; provided that changes in the elevations may be made to accommodate environmental, engineering, architectural, cost, topographic or other development conditions subject to the review and approval of the Director of Community Development. A copy of these elevations shall be placed in the file with the Planning and Zoning Division of the Department of Community Development.

5. There shall be a landscaped buffer along the eastern, southern, and western rights-of-way as depicted on the Conceptual Site Plan. The buffer shall consist of the following:

- a) Eastern (along existing 3200 Magruder Blvd property) – minimum five (5) foot wide landscape strip, consisting of retained existing street trees, supplemented with additional street trees at a minimum spacing of 50 feet apart and the addition of continuous evergreen shrub row, capable of achieving and maintained at a minimum 36" in height.
- b) Eastern (along existing 36 Research Drive) – minimum twenty (20) foot wide buffer consisting of preserved existing trees, with the exception that all dead, diseased or damaged vegetation and invasive species may be removed only to the extent necessary. At the ground level downed trees, limbs, and living understory less than two (2") inches in caliper may also be removed to the extent necessary. Pavement areas, including but not limited to parking, drive aisles, loading areas, etc., within the property adjacent to the

buffer shall also include the addition of continuous evergreen shrub row, capable of achieving and maintained at a minimum 36" in height.

- c) Southern (along Floyd Thompson) – minimum twenty (20) foot wide landscape area, consisting of retained existing street trees, supplemented with additional street trees and understory and/or evergreen trees at a minimum spacing of 30 feet apart staggered and the addition of continuous evergreen shrub row, capable of achieving and maintained at a minimum 36" in height.
- d) Western (along Magruder Blvd) – minimum twenty (20) foot wide buffer consisting of preserved existing trees, with the exception that all dead, diseased or damaged vegetation and invasive species may be removed only to the extent necessary. At the ground level downed trees, limbs, and living understory less than two (2") inches in caliper may also be removed to the extent necessary. Pavement areas, including but not limited to parking, drive aisles, loading areas, etc., within the property adjacent to the buffer shall also include the addition of continuous evergreen shrub row, capable of achieving and maintained at a minimum 36" in height.
- e) Planting Specifications – at time of planting, deciduous trees shall be a minimum 2" caliper, evergreen trees shall be minimum ten (10) feet in height, and shrubs shall be a minimum 24" in height.

In the event of a conflict between the foregoing and the City's landscape guidelines or the O-MVC Magruder Visual Corridor Overlay, the landscape guidelines and the Overlay shall control.

6. It is understood that all phases of the proposed project shall comply with all ordinances of the City of Hampton.

7. 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.

8. 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.

9. 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 signature:

Signatures of following pages

Grantor:

RED MOON PARTNERS, LLC,
a Virginia limited liability company

By:

Name: JAMES CRAWFORD

Title: PRESIDENT

STATE OF VIRGINIA
City of Hampton, to-wit:

I, HOLLY N. COLLINS, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that JAMES CRAWFORD, whose name is signed to the foregoing instrument as (title) PRESIDENT of RED MOON PARTNERS, LLC, a Virginia limited liability company has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 30th day of MAY, 2019 on behalf of said RED MOON PARTNERS, LLC. He/she ☒ is personally known to me or ☒ has produced driver's license as identification.

Holly N. Collins
Notary Public

My commission expires: 3/31/23
Registration No. 7662880



Grantor for recording purposes only:

EAGLE LAND, LLC,
a Virginia limited liability company

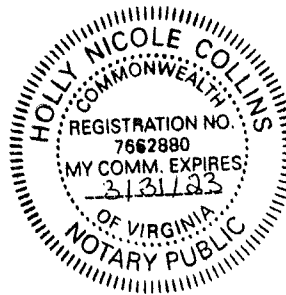
By: Mia C Copeland
Name: Mia C Copeland
Title: VP / Secretary

STATE OF VIRGINIA
City of Hampton, to-wit:

I, Holly N. Collins, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Mia C. Copeland, whose name is signed to the foregoing instrument as (title) vp/secretary of EAGLE LAND, LLC, a Virginia limited liability company has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 30th day of may, 2019 on behalf of said EAGLE LAND, LLC. He/she ☐ is personally known to me or ☒ has produced driver's license as identification.

Holly N. Collins
Notary Public

My commission expires: 3/31/23
Registration No. 7662880



Grantor for recording purposes only:

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF HAMPTON**

a political subdivision of the Commonwealth of
Virginia

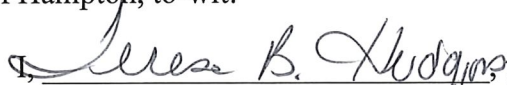
By: 


Name: Michelle T. Leever

Title: Chair

STATE OF VIRGINIA

City of Hampton, to-wit:

, the undersigned, a Notary Public in and for the City
and State aforesaid, do hereby certify that Michelle T. Leever, whose name is
signed to the foregoing instrument as (title) Chair of THE ECONOMIC
DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON, a political subdivision of the
Commonwealth of Virginia, has sworn to, subscribed, and acknowledged the same before me in
the City and State aforesaid, this 25th day of May, 2019 on behalf of said THE
ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF HAMPTON. He/she ☐ is
personally known to me or ☒ has produced _____ as
identification.


Notary Public

My commission expires: May 31 2021
Registration No. 201790

Teresa B. Hudgins
Notary Public
Commonwealth of Virginia
Registration #201790

Exhibit A
Legal Description

3200 MAGRUDER BLVD HAMPTON , VA 23666

All of those lots or parcels of land located in Hampton City, Virginia and more particularly described as follows:

All that certain lot, piece or parcel of land, with the improvements thereon and the appurtenances thereunto belonging, lying and being in the City of Hampton, Virginia, and containing approximately five (5) acres, more or less, as shown on that certain "ALTA/ACSM LAND TITLE SURVEY OF WYLE LABORATORIES (DB 403, PG 862)" made by Miller-Stephenson & Associates, P.C., dated August 27, 1999, and being more particularly described as follows:

BEGINNING at a pin on the east side of Magruder Boulevard 390.00 feet from the intersection of Magruder Boulevard and Floyd Thomson Drive; thence S 80 degrees 58' 37" E a distance of 550.00 feet to a point on the west side of Research Drive; thence S 09 degrees 01' 23" W a distance of 385.00 feet to a point; thence with a 15 foot radius curve to the right and an arc length of 23.56 feet to a point on the northern side of Research Drive; thence N 80 degrees 58' 37" West a distance of 525.00 feet to a point; thence N. 35 degrees 58' 37" W a distance of 14.14 feet to a point on the easterly right-of-way line of Magruder Boulevard; thence along said easterly right-of-way line of Magruder Boulevard N 09 degrees 01' 23" E a distance of 390.00 feet to the point of beginning and containing 5.04 acres, more or less.

It being the same parcel conveyed to Eagle Land, LLC, a Virginia limited liability company, by deed from Hampton-Magruder Properties, L.L.C., dated March 7, 2006 and duly recorded March 16, 2006 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia as Instrument Number 060006884.

36 RESEARCH DR HAMPTON , VA 23666

All that certain lot, piece or parcel of land, situate, lying and being in the City of Hampton, Virginia, and containing approximately five (5) acres, as shown on that certain plat entitled "Plat of Property to be Conveyed to Wyle Laboratories, Hampton, Virginia", made by S. J. Glass and Associates, Engineering Services, Hampton, Virginia", made by S. J. Glass and Associates, Engineering Services, Hampton, Virginia, dated August 12, 1971, which plat is attached as Exhibit "A" to the deed dated February 9, 1972 from Regional Redevelopment and Housing Authority for Hampton and Newport News, Virginia to Wyle Laboratories recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia in Deed Book 449, page 769.

It being the same property conveyed to Industrial Development Authority of the City of Hampton, now known as the Economic Development Authority of the City of Hampton, Virginia, by deed dated October 26, 2001 and duly recorded January 22, 2002 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia as Instrument Number 020001304. The Industrial Development Authority of the City of Hampton, Virginia changed its name to the Economic Development Authority of the City of Hampton by Ordinance dated December 12, 2012 and duly recorded in the aforesaid Clerk's Office as Instrument Number 13012554.