

Prepared by:  
Kaufman & Canoles, P.C.  
2236 Cunningham Drive  
Hampton, VA 23666

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

### **PROFFER AGREEMENT**

**THIS PROFFER AGREEMENT** ("Agreement") made as of May 1, 2020, by and between **BLUEWATER YACHT SALES, L.C.**, 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 the owner of several parcels of property located in the City of Hampton (the "City"), and it recently has purchased two (2) additional parcels from the City identified as Tax Parcel Numbers 2002669 & 2002670 and more fully described on **Exhibit "A"** (the "Property"), which are the subject of this Agreement.

B. Grantor has initiated a conditional amendment to the zoning map of the City, Virginia, by petition addressed to Grantee so as to change the zoning classification of the Property from R-13 to M-2.

C. Grantor has requested approval of this Proffer 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 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 this Proffer 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 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 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 for yacht sales, light repair and service, and storage, together with all accessory uses. The repair and service work shall not include sanding, spray painting, or engine/powertrain repair.

2. A privacy fence will be installed along the outer boundaries which adjoin residential areas; specifically, the easterly boundary of 92 Marina Road and southerly boundaries of both 90 and 92 Marina Road. The privacy fence shall have a minimum height of six feet (6') in all locations except along the side property line where it is within ten feet (10') of the Marina Road right-of-way, and that section of the fence shall not exceed four feet (4') in height.

3. A ten foot (10') wide vegetated buffer will be planted and maintained along and inside of the aforementioned privacy fence along the easterly boundary of 92 Marina Road and southerly boundaries of both 90 and 92 Marina Road. The buffer shall consist of a combination of evergreen trees and shrubs. The trees shall be capable of reaching a height of twenty feet (20') at maturity and will be planted no further than twenty feet (20') apart on center. The shrubs shall be capable of forming a hedge between the trees and will be at least two feet (2') in height at planting. The buffer shall be reserved for vegetation, and no accessory structures shall be permitted within the buffer other than fencing, and/or parking, storage or maintenance of any vehicles, boats or trailers.

4. The interior lot line between 90 and 92 Marina Road will be vacated so that the two (2) lots will be combined into one lot.



5. If a building is constructed on the Property the maximum height shall be no more than thirty-five feet (35').

6. 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.

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

8. Grantor acknowledges that further lawful conditions and restrictions may be required in accordance with City Code, City Zoning Ordinances and all applicable codes and regulations, by Grantee during detailed administrative and site plan reviews. Grantor further acknowledges that the City Code and City Zoning Ordinances shall control if more restrictive than the proffered conditions.

9. All references hereinabove to zoning districts and to regulations applicable thereto, refer to the City Zoning Ordinance of the City, 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 shall be vested with all necessary authority on behalf of the governing body of the City 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 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 name of the Grantor and Grantee.

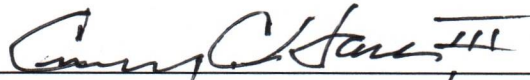
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**SIGNATURE FOLLOWS**

WITNESS the following signature and seal:

GRANTOR:

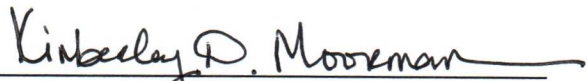
BLUEWATER YACHT SALES, L.C.,  
a Virginia limited liability company

By:   
Curry C. Hall, III, Manager

STATE OF VIRGINIA  
CITY OF HAMPTON, to-wit:

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2020, by Curry C. Hall, III, the Manager of Bluewater Yacht Sales, L.C., a Virginia limited liability company, for and on behalf of the company. The said Curry C. Hall, III ☒ is personally known to me or ☐ has produced satisfactory evidence of identity.

My commission expires: 10/31/2020

  
Notary Public (affix seal and registration number)





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

All that certain lot, piece or parcel of land, lying, being and situate in the City of Hampton, Virginia, containing 25,004 square feet, more or less, being shown and designated as "FRANK A. ANTHONY ET UX" on that certain plat entitled, "PLAT SHOWING PROPERTY ACQUIRED FROM: FRANK A. ANTHONY ET UX MARINA ROAD", dated February 28, 1977, and prepared by City Engineer -- R. Wayne Johnson, P.E. -- C.L.S.; a copy of which plat is attached to that certain deed dated March 9, 1977 from Frank A. Anthony, et ux, to The City of Hampton, Virginia, duly recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia in Deed Book 501, page 642, to which said plat reference is here made.

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