

Prepared by:
Orchard Oaks LLC
2 Eaton Street - Suite 901
Hampton VA 23669

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

**LRSN:12003432, 12003433,
12003435 & 12003434**

PROFFER AGREEMENT

THIS PROFFER AGREEMENT (“Agreement”) made this ____ day of _____, 2025, by and between BWDS LLC, a Virginia limited liability company, (index as “Grantor”); Gerald Clarington (index as “Grantor”) (collectively with BWDS LLC, the “Sellers”); Orchard Oaks LLC, a Virginia liability company, (index as “Grantor”); and THE CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia (the “Grantee” or the “City”), with an address of 22 Lincoln Street, Hampton City Hall, Hampton, Va. 23669.

RECITALS

- A. Sellers are the owners of a certain parcel of property located in the City of Hampton, herein known as LRSN Number(s) 12003432, 12003433, 12003435 & 12003434, and more fully described on “Exhibit A” (the “Property”).
- B. Sellers and Orchard Oaks LLC (collectively, the “Grantor”) intend to conclude a transfer of ownership of the Property to Orchard Oaks LLC in order to facilitate Orchard Oaks LLC’s development of the Property in accordance with the terms of this Agreement.
- 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 General Commercial (C-3)

District and One Family Residential (R-11) District to Multifamily Residential (MD-4) District.

- 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 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.

NOW, THEREFORE, for and in consideration of the approval and acceptance by 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 Property shall be developed in substantial conformance with the conceptual site plan entitled "Orchard Oaks on the Boulevard: Architectural Site Plan; A201" Dated June 4, 2025, prepared by DBA Architects (the "Concept Plan"), a copy which is on file with the Community Development Department and has been exhibited to the Hampton Planning Commission and Hampton City Council for illustrative purposes and to provide justification for the rezoning action. Minor changes in the Concept Plan may be made to accommodate environmental, engineering, architectural, topographic, or other development conditions, or site/subdivision plan approval requirement as required by applicable law and/or regulation and subject to approval of the Director of Community Development or their designee for consistency with the terms of this proffer. A copy of the final approved Concept Plan shall be placed in the file with the Planning Division of the Department of Community Development and shall supersede any previous Concept Plan.
- 2) Development Standards
 - a) All structures shall be constructed in substantial conformance with the elevations, entitled "Orchard Oaks on the Boulevard: Building Elevations", dated May 12, 2025, prepared by DBA Architects (collectively, the "Elevations"), copies of which are on file with the Community Development Department. The Elevations have been exhibited to the Hampton Planning Commission and 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, topographic or other development conditions, building code, or site/subdivision plan approval requirements as required by applicable law and/or regulations and subject to approval of the Director of Community Development or their designee for consistency with the terms of this proffer. 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 previous Elevations.
 - b) The construction of the proposed structures shall be as follows:
 - i) Primary and secondary building materials for the front, side, and rear elevations shall be brick, full-face brick veneer, stone veneer, cement fiber board, concrete panels, ground face or polished concrete block, precast or cut stone, engineered wood, wood

- or composite lap siding, metal or composite panel systems, and/or glass. Acceptable trim materials are PVC, vinyl, and/or cementitious board. Painted wood trim is not permitted.
- ii) Acceptable balcony/porch railing materials are decorative metal. Painted wood railing is not permitted.
 - iii) Acceptable roof materials are 30-year asphalt architectural shingles and standing seam metal accent roofs where visible and membrane roof in areas that are concealed from view, such as behind parapet walls.
- c) Any proposed fencing located between any building facade and public right-of-way shall be decorative metal picket fencing or similar, no taller than four (4) feet in height, and may incorporate brick/stone columns and/or posts, as approved by the Community Development Director or their designee.
 - d) Any proposed fencing along the portion of the side or rear yard which is not referenced in Condition 2(c) may be opaque fencing and shall be no taller than eight (8) feet in height as approved by the Community Development Director or their designee.
 - e) The community amenities shall include a community clubhouse with a leasing office, interior mailboxes, a package room, a fitness room, an indoor billiard/game room, a business center/conference room, community sidewalks, a pool, outdoor grilling areas, and fire pits. Other similar amenities intended to provide a comparable recreational value and/or communal focal point may be provided in place of those previously listed with the approval of the Director of Community Development or their designee.
 - f) Development of the Property shall include the following resiliency and sustainability elements:
 - i) The buildings constructed on the Property shall be designed to meet the 115-mile-per-hour wind load design requirements of the applicable building code.
 - ii) EnergyStar-certified hot water heaters, refrigerators, and dishwashers will be installed in the apartment units.
 - iii) All buildings will be designed and constructed to meet the following EnergyStar Multifamily New Construction requirements: LED lighting, 15 SEER-rated heat pumps with electric backup heat, and programmable thermostats.

- iv) Provision of a minimum of five (5), Level II electric vehicle charging stations shall be provided and distributed throughout the development.
- v) Retain and protect existing five (5) large trees on the eastern portion of the property by establishing tree protection zones and using standard tree protection measures as approved by the Director of Community Development or their designee:
 - (1) Removal of any such trees without prior written approval from the Director of Community Development or their designee is strictly prohibited.
 - (2) Prior to any site work, grading, or construction activity, tree protection fencing shall be installed. Fencing must remain in place until all construction activities are complete.
 - (3) No excavation, storage of materials, dumping, parking of vehicles, or operation of machinery shall occur within the tree protection zones.
 - (4) If a protected tree is damaged during construction, the applicant must notify the Director of Community Development or their designee immediately. Remediation measures, including but not limited to pruning, soil aeration, or root treatment, shall be implemented under the direction of a certified arborist. If a tree is irreparably damaged or removed, such tree shall be replaced at a ratio of 4:1 with similar oak trees of a minimum three (3) inch caliper as approved by the Director of Community Development or their designee. A tree credit of 4 trees per each tree saved will be applied to the final landscape plan.
- g) 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:
 - i) The landscape plan shall comply with the Concept Plan;
 - ii) The final landscape plan shall be in conformance with the City of Hampton Landscape Guidelines;
 - (1) The Landscape Buffers, as depicted on the Concept Plan, shall consist of a mixture of evergreen and deciduous trees, shrubs, and groundcover, as indicated on the Concept Plan.

- (2) Vegetation: All existing trees within the Landscape Buffer shall be preserved, with the exception that all dead, diseased or damaged vegetation and invasive species, which shall be removed only to the extent necessary. All trees installed in the Landscape Buffer shall be dispersed throughout the required planting areas and shall be planted with a combination of single trees and groups of trees in a staggered, clustered or other pattern. Trees shall not be installed in a continuous single row except where necessary and appropriate to meet screening buffer requirements. Shrubs shall be installed in groupings and integrated with trees. No trees or shrubs will be required in areas that preclude their planting due to a utility easement.
- (3) Plant Spacing: Four (4) canopy trees, two (2) understory trees and sixteen (16) shrubs within every one-hundred (100) linear feet of Landscape Buffer as indicated on the Concept Plan.
- (4) Plant Specifications: Buffer plant materials shall be a combination of deciduous and evergreen canopy and understory trees as well as deciduous and evergreen shrubs. No more than fifty percent (50%) of the required trees and shrubs shall be of any one type, nor shall more than twenty-five percent (25%) of the required trees and shrubs be of any single species (e.g., maple, pine, oak, dogwood, holly, etc.).
- iii) A minimum of seventy-five percent (75%) of all trees and shrubs shall be native species to the Commonwealth of Virginia as identified by the Virginia Department of Conservation and Recreation; the remaining twenty-five percent (25%) may be trees and shrubs adapted to the USDA Hardiness Zones 8a and 8b.
- iv) All new trees and shrubs shall meet the following size requirements:
- | Plant Type | Installed Size | Mature Height Capability |
|-------------------|----------------|--------------------------|
| Shade/Canopy Tree | 2" caliper | >50' |
| Evergreen Tree | 8-10' height | >40' |
| Understory Tree | 8-10' height | >20' |
| Evergreen Shrub | 24-30" height | >6' |
- h) HVAC systems shall be screened from the right-of-way and adjacent properties through the use of landscaping, fencing, or placement on roofs hidden by roof parapets.

- i) 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. Uplighting through the use of sconces located on the face of the building will be allowed solely on the face of the buildings for decorative purposes.
- 3) In lieu of the ARTICLE V. - MD-4 DISTRICT—MULTIFAMILY RESIDENTIAL, Sec. 5-45. - Setback regulations for front yard setbacks of multifamily requiring a maximum of twenty-five (25) feet, a fifty (50) foot setback is required along 183 E. Mercury Blvd. due to the Dominion Energy easement that incorporates high-power electrical service running parallel to Mercury Blvd.
- 4) The Property shall be combined in accordance with Chapter 35 of the Hampton City Code, subject to approval by the City of Hampton and recordation of a final property line vacation plat, such that LRSNs 12003432, 12003433, 12003435 & 12003434 are combined to create one parcel.
- 5) As per the Traffic Impact Analysis, the proposed Orchard Oaks access point will be aligned with Southerland Drive and a southbound left turn lane shall be provided on E Mercury Boulevard at the access point. The southbound left turn lane on E Mercury Boulevard shall be an 125-foot turn lane with a 100-foot taper based on the VDOT turn lane design standards Figure 3-1 Right and Left Turn Lane Criteria for Single and Dual Lanes utilizing urban criteria. In addition, an 100-foot northbound right turn lane with a 100-foot taper shall be provided on E. Mercury Boulevard per VDOT standards.
- 6) Within 36 months from issuance of rezoning/use permit approval, the walls, roof, windows and doors will be completed on all buildings. Within 24 months of rezoning/use permit approval, all building permits will be obtained by Grantor. .
- 7) It is understood that all phases of the proposed project shall comply with all ordinances of the Grantee.
- 8) 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.

- 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.

[Remainder of Page Intentionally Left Blank - Signatures on Following Page]

WITNESS the following signatures:

Grantor:

BWDS LLC

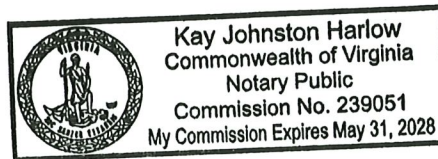
By: St Wood

STATE OF VIRGINIA
City of Hampton, to-wit:

I, Kay J Harlow, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Steven Wood, whose name is signed to the foregoing instrument as (title) member of BWDS, LLC, a Virginia (type of entity) LLC, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 9 day of June, 2025 on behalf of said BWDS, LLC. He/she ☒ is personally known to me or ☐ has produced _____ as identification.

Kay Harlow
Notary Public

My commission expires: May 31, 2028
Registration No. 239051



WITNESS the following signatures:

Grantor:

[Signature]

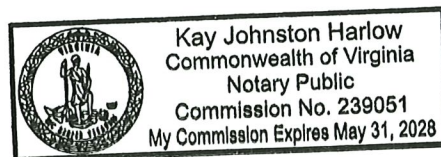
By: Gerald Clarrington

STATE OF VIRGINIA
City of Hampton, to-wit:

I, Kay J. Harlow, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Gerald Clarrington, whose name is signed to the foregoing instrument as (title) owner of the Property, a Virginia (type of entity) N/A, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 9 day of June, 2025 on behalf of said Property. He/she ☒ is personally known to me or ☐ has produced _____ as identification.

Kay Johnston Harlow
Notary Public

My commission expires: May 31, 2025
Registration No. 239051



WITNESS the following signatures:

Grantor:

Orchard Oaks, LLC

By: Daniel W. Aston

STATE OF VIRGINIA
City of Hampton, to-wit:

I, Kay J. Harlow, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Daniel W. Aston, whose name is signed to the foregoing instrument as (title) Manager of Orchard Oaks, a Virginia (type of entity) LLC, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 9 day of June, 2025 on behalf of said Orchard Oaks LLC. He/she ☒ is personally known to me or ☐ has produced _____ as identification.

Kay Harlow
Notary Public

My commission expires: May 31, 2028
Registration No. 239051

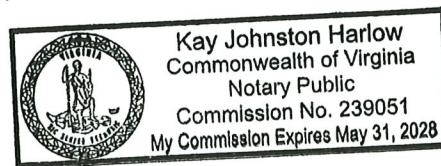


Exhibit A
Legal Description

Legal Description for 183 E Mercury Blvd A (12003433)

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia, which said parcel of land fronts on the easterly side of East Mercury Boulevard and contains one and one-half (1 1/2) acres, more or less, and is bounded on the North by other property of William L. Wood and the property now or formerly of Frazier, on the East by other property of William L. Wood, on the South by the property now or formerly of J. T. Cox, and on the by West East Mercury Boulevard and other property of William L. Wood.

Legal Description for 261 Woodland Rd (12003435)

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia, containing eight (8) acres, more or less, and being more particularly described as follows:
Beginning at a point located on the westerly side of Woodland Road, where the northerly boundary line of the property now or formerly belonging to Outten intersects with the said westerly side of Woodland Road; from the point of beginning thus established, running thence along the northerly line of the property now or formerly belonging to Outten N. 89 ½° W. to a pipe; thence N. ½° E. a distance of 279 feet along the easterly boundary line of other property of William L. Wood (formerly the property of Elizabeth Sinclair) to a pipe; thence S. 89 ½° E. along the southerly line of the property now or formerly known as the "Fulton Farm" to Woodland Road; thence in a southerly direction along the westerly side of Woodland Road to the point or place of beginning.

Legal Description for 183 E Mercury Blvd (12003432)

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia, fronting on the easterly side of East Mercury Boulevard and is shown on a certain plat entitled "PLAT OF CHARLES H. WOOD'S PROPERTY, PURCHASED FROM MRS. ELIZ C. SINCLAIR," made by Girard Chambers & Son, dated May 19, 1949, which plat is attached to the deed from Elizabeth C. Sinclair, et vir, to Charles H. Wood, dated June 6, 1949, and recorded in the aforesaid Clerk's Office in Deed Book 165, page 245; and reference to said plat is here made for a more particular description of the property.

Legal Description for 265 Woodland Road (12003434)

ALL THAT certain lot, piece or parcel of land situate, lying and being in the City of Hampton, Virginia, and described as follows: Commencing from the northerly intersection of Woodland Road and Woodcrest Drive; thence, in a northerly direction along the westerly right-of-way of Woodland Road a distance of 50' more or less, to a pipe found, which is the point of beginning; thence N. 88 degrees 20' 00" W. at a distance of 174.66' to a point; thence, N. 2 degrees 49' 00" E. at a distance of 96.30' to a point; thence, S. 88 degrees 20' 00" E. at a distance of 188.27; to a point in the western right-of-way of Woodland Road; thence along the western right-of-way of Woodland Road S. 10 degrees 50' 23" W. a distance of 97.53' to a pipe found, which is the point of beginning, having an area of 17,471 square feet. IT BEING the same property conveyed to Gerald C. Clarrington, by Deed from Rosa C. Flores, dated December 9, 2020 and recorded December 11, 2020 in the Clerks' Office of the Circuit Court of the City of Hampton, Virginia as Instrument No. 200018350