

Prepared by:  
Kaufman & Canoles, P.C.  
Timothy O. Trant II, Esq.  
11815 Fountain Way, Suite 400  
Newport News, VA 23606

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

**LRSN: 7000335, 7000336,  
and 7000337**

### **PROFFER AGREEMENT**

**THIS PROFFER AGREEMENT** (“Agreement”) made this \_\_\_\_ day of February, 2025, by and between **FRANCES C. KLOVSTAD, WILLIAM M. CUMMING, MARY A. CUMMING, CATHERINE J. RYAN, ALLEN S. JUDKINS, MARTHA H. MACLAY, BEVERLY H. LEHMAN, BARBARA H. WILDE and FREDERICK S. HARTMAN** (“Seller”) (index as “Grantor”); **FRANKLIN GROUP COMPANIES, LLC**, a Virginia limited liability company (“FJG”) (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. Seller is the owner of a certain parcel of property located in the City of Hampton, herein known as 1616, and 1612 N. Armistead Avenue, LRSN: 7000335, 7000336, and 7000337, and more fully described on “Exhibit A” (the “Property”).
- B. Seller and FJG (collectively, “Grantor”) intend to conclude a transfer of ownership of the Property to FJG in order to facilitate FJG’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 Parks and Open Space General (PO-1) 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**

- A) The Property shall be developed in substantial conformance with (1) the conceptual site plan entitled "1612 ARMISTEAD AVENUE Conceptual Development Plan", dated August 20, 2024, and prepared by Timmons Group (the "Concept Plan"), a copy of 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 this 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 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 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.
- B) Development Standards
  - 1. There shall be a maximum of 215 apartment units (each, an "Apartment Unit" and collectively, the "Apartment Units") constructed on the Property.

2. The Apartment Units to be constructed on the Property shall be in substantial conformance with the elevations, entitled "NEW MULTIFAMILY DEVELOPMENT ARMISTEAD AVE. APARTMENTS THE FRANKLIN JOHNSTON GROUP 1612-1616 North Armistead Avenue Hampton, VA", dated October 9, 2024, prepared by Cox, Kliewer & Company, P.C. (collectively, the "Elevations"), copies of which are on file with the Community Development Department which 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.
  3. The construction of the Apartment Units 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, premium, fade resistant vinyl (with a .046" minimum thickness and a minimum width of 5"), 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 and/or vinyl. Painted wood trim is not permitted.
- C) Acceptable fencing materials shall be PVC, wood composite, and/or decorative aluminum pickets. Other suitable fencing materials complementary to the building architecture may be approved by the Director of Community Development or their designee.
- D) The community amenities shall include, but not be limited to, community bike racks, indoor bike storage, community sidewalks, pool, clubhouse, fitness center, 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.
- E) Development of the Property shall include the following resiliency and sustainability elements:
1. The Apartment Units constructed on the Property shall be designed to meet the 110 mile per hour wind load design requirements of the applicable building code.

2. Energy Star certified hot water heaters, refrigerators, and dishwashers will be installed in the homes at the time of the final building inspection for the initial certificate of occupancy.
  3. All buildings will be designed and constructed to meet the EnergyStar Multifamily New Construction requirements.
  4. Five (5) electric vehicle charging stations shall be provided.
  5. As noted on the Conceptual Plan, the rear parking area will include pervious pavement or asphalt in the area of the parking stalls.
- F) 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:
1. The landscape plan shall comply with the Concept Plan;
  2. The landscape plan shall be in conformance with the City of Hampton Landscape Guidelines;
  3. Trees and shrubs shall be native species to the Hampton Roads region, as found within the "Native Plants for Southeast Virginia including Hampton Roads Region" guidebook, on file with the Planning and Zoning Division, except that up to 25% of the plant materials may include crepe myrtles, palms, and other southern planting elements even if not native to the Hampton Roads Region, provided other requirements of the Agreement are met; and
  4. Street trees shall be provided and maintained along Armistead Avenue, one (1) street tree shall be planted within the City right-of-way every thirty-five (35') to forty (40') feet, on-center. The street trees shall include a mix of plant species (not less than 3 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.
- G) Ground-mounted HVAC systems shall be screened from the right-of-way and adjacent properties through the use of landscaping or fencing.
- H) 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.
- I) Due to the complexity of the multifamily project and in alignment with City policy, Use Permit 25-0011, brought in conjunction with this rezoning, shall automatically expire and become null and void under any of the following conditions:

1. If, in the case of new construction, the building has not been erected, with doors, windows, roof covering and exterior finish materials in place within three (3) years of the issuance of the use permit;
  2. No building permit to construct the authorized improvements has been issued within two (2) years of the date of approval by the City Council, or if no building permit is required, if the use is not established within two (2) years of the date of approval by the City Council; or
  3. Once the property may be occupied, if the property is not used for the permitted purpose for a continuous two-year period unless otherwise specified in the zoning ordinance. In making this determination the Grantee may consider such matters as the issuance of a building permit, a business license, utility connections and such related factors.
- J) It is understood that all phases of the proposed project shall comply with all ordinances of the Grantee.
- K) 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.
- L) 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.
- M) 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.

[Signatures located on the following pages]

[Signature Page to Proffer Agreement]

WITNESS the following signatures:

**GRANTOR:**

Frances C Klovstad  
**FRANCES C. KLOVSTAD**

STATE OF Virginia  
COUNTY/CITY of Hampton, to-wit:

I, James C. Reid, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that FRANCES C. Klovstad, whose name is signed to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 10<sup>th</sup> day of FEBRUARY, 2024 ~~2025~~ on behalf of said FRANCES C. Klovstad. He/she ☐ is personally known to me or ☒ has produced Virginia Driver's License as identification.

James C. Reid  
Notary Public

My commission expires: 4/30/2025

Registration No. 366272



[Signature Page to Proffer Agreement]

WITNESS the following signatures:

GRANTOR:

  
WILLIAM M. CUMMING

STATE OF Virginia  
COUNTY/CITY of Accomack, to-wit:

I, Keondre Ames, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that William M. Cumming, whose name is signed to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 5 day of February 2024 on behalf of said William M. Cumming. He/she ☐ is personally known to me or ☒ has produced Drivers License as identification.



Notary Public

My commission expires: 11/30/2028  
Registration No. 00342716





[Signature Page to Proffer Agreement]

WITNESS the following signatures:

GRANTOR:

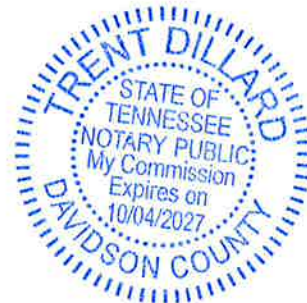
  
MARY A. CUMMING

STATE OF Tennessee  
COUNTY/CITY of Davidson/Nashville, to-wit:

I, Trent Dillard, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Mary Cumming, whose name is signed to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 11 day of February, 2024 on behalf of said owner. He/she ☐ is personally known to me or ☒ has produced Driver's License as identification.

  
Notary Public

My commission expires: 10/04/2027  
Registration No. N/A



[Signature Page to Proffer Agreement]

WITNESS the following signatures:



GRANTOR:

Catherine J. Ryan

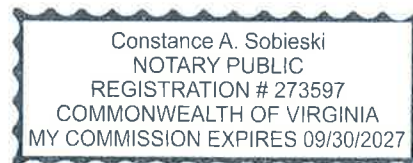
CATHERINE J. RYAN

STATE OF Virginia  
COUNTY/CITY of Hampton, to-wit:

I, Carlisle J London, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Catherine J. Ryan, whose name is signed to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 16 day of February, ~~2024~~ 2025 on behalf of said Catherine J. Ryan. He/she ☐ is personally known to me or ☒ has produced Virginia State Driver's License as identification. CL

Carlisle J London  
Notary Public

My commission expires: April 30, 2028  
Registration No. 00286873



[Signature Page to Proffer Agreement]

WITNESS the following signatures:

GRANTOR:

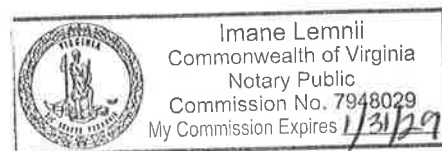
MARtha H. M MacLay  
MARTHA H. MACLAY

STATE OF Virginia  
COUNTY/CITY of Albemarle, to-wit:

I, IMANE LEMNII, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that MARTHA MACLAY, whose name is signed to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 06 day of February, 2025<sup>th</sup> on behalf of said MARTHA MACLAY. He/she ☐ is personally known to me or ☐ has produced VA Driver's License as identification.

Imane Lemnii  
Notary Public

My commission expires: 1/31/2029  
Registration No. 7948029



[Signature Page to Proffer Agreement]

WITNESS the following signatures:

**GRANTOR:**

Beverly H. Lehman  
**BEVERLY H. LEHMAN**

STATE OF Pennsylvania  
COUNTY/CITY of Cumberland, to-wit:

I, Lottie Loe, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Beverly H. Lehman, whose name assigned to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 5 day of February, 20215 on behalf of said Beverly H. Lehman. He/she ☐ is personally known to me or ☒ has produced PA DL as identification.

Lottie Loe  
Notary Public

My commission expires: MAY 9, 2027  
Registration No. 1348806

Commonwealth of Pennsylvania - Notary Seal  
Lottie Loe, Notary Public  
Cumberland County  
My commission expires May 9, 2027  
Commission number 1348806  
Member, Pennsylvania Association of Notaries

[Signature Page to Proffer Agreement]

WITNESS the following signatures:

GRANTOR:

Barbara H. Wilde  
BARBARA H. WILDE

STATE OF Utah  
COUNTY/CITY of Weber, to-wit:

I, Rainy Jones, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Barbara H. Wilde, whose name is assigned to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 5th day of February, ~~2024~~ 2025 on ES behalf of said State Identification. He/she ☐ is personally known to me or ☐ has produced State Identification as identification.

Rainy Jones  
Notary Public

My commission expires: 02/04/2028  
Registration No. 736465



[Signature Page to Proffer Agreement]

WITNESS the following signatures:

GRANTOR:

  
FREDERICK S. HARTMAN

STATE OF Illinois  
COUNTY/CITY of McHenry, to-wit:

I, Christopher Anthony Rana, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Frederick S. Hartman, whose name is assigned to the foregoing instrument, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 5<sup>th</sup> day of February, 2023/2024 on behalf of said Illinois Driver's License. He/she ☐ is personally known to me or ☒ has produced Illinois Driver's License as identification.



  
Notary Public

My commission expires: 992588  
Registration No. 6-20-28

[Signature Page to Proffer Agreement]

**GRANTOR:**

FRANKLIN GROUP COMPANIES, LLC

By: W. Taylor Franklin

Name: W. Taylor Franklin

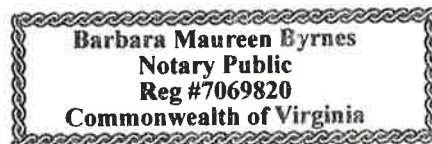
Its: Manager

STATE OF Virginia  
COUNTY/CITY of Virginia Beach, to-wit:

I, Barbara Maureen Byrnes, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that W. Taylor Franklin, whose name is signed to the foregoing instrument as (title) Manager of Franklin Group Companies, LLC, a Virginia limited liability company, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 12<sup>th</sup> day of February, 2025 on behalf of said Franklin Group Companies, LLC. He/she ☐ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

Barbara Maureen Byrnes  
Notary Public

My commission expires: 10/31/2027  
Registration No. 7069820





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

All that certain tract or parcel of land, together with the buildings and improvements thereon, situate and being in the City of Hampton, Virginia, containing 15.78 acres, more or less, and being conveyed in gross and not by the acre, said land being bounded on the South by Armistead Avenue, on the West by the subdivision known as Windsor Terrace, on the North by the property now or formerly owned by Horne Brothers, Inc. and on the East by the property of Etta S. Anderson, et al, and Donald and Martha Judkins.

Being a part of the same property conveyed unto Edwin Allen Sinclair by Deeds of Cecil W. Sinclair, et ux, and Cecil W. Sinclair, dated respectively August 2, 1930, and July 31, 1934, and recorded respectively in Deed Book 84, page 343, and in Deed Book 91, page 54, in the Clerk's Office for the City of Hampton, Virginia.

All that certain lot, piece or parcel of land containing 1.62 acres, more or less, situate, lying and being in the City of Hampton, Virginia, beginning at a point in the Northerly line of North Armistead Avenue at an iron pipe located at the Southwest corner of the property of E. P. Anderson, and from the point thus established running thence North 51 degrees 45 minutes West with the Northerly line of North Armistead Avenue a distance of 120 feet to an iron pipe; thence, North 32 degrees 41 minutes 33 seconds East a distance of 585.58 feet to a point marked by a pipe; thence, South 58 degrees 10 minutes 07 seconds East a distance of 119.45 feet to a pipe in the line of E. P. Anderson; thence, South 32 degrees 41 minutes 33 seconds West with the Westerly line of Anderson a distance of 599 feet to the point of the beginning, said property being shown on a certain map entitled, "Plat Showing Portion of Property of E. A. Sinclair", made by S. J. Glass & Associates, Engineering Services, dated April 16, 1966, and a copy of which is hereto attached and made a part hereof.