

Tax Parcel Number: 13004389

Prepared by:
Lawrence G. Cumming (VSB No. 15820)
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: BNB

**AMENDED AND RESTATED
PROFFER AGREEMENT**

THIS AMENDED AND RESTATED PROFFER AGREEMENT (“Agreement”) made as of August 18, 2016, by and between **FRANCISCUS HOMES, INC.**, a Virginia corporation [index as a grantor]; **SOUTH MOYOCK DEVELOPMENT, LLC**, a North Carolina limited liability company [index as a grantor]; and **THE CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia [index as a grantee], with an address of 22 Lincoln Street, Hampton City Hall, Hampton, VA 23669.

RECITALS

A. South Moyock Development, LLC (“South Moyock Development”) is the owner of the property located at 1611 Power Plant Parkway, Hampton, Virginia 23666, tax identification number 13004389 (the “Property”), currently zoned MD-2.

B. Franciscus Homes, Inc. (“Franciscus”) is the developer of the Property; however, it no longer intends to take title to the Property.

C. Franciscus, the former owners of the Property, and the City of Hampton, Virginia (the “City”) entered into a Proffer Agreement dated June 24, 2015, which was recorded in the

Clerk's Office of the Circuit Court for the City of Hampton, Virginia on October 29, 2015 as Instrument Number 150013787 (the "Original Proffer Agreement").

D. Franciscus and South Moyock Development have initiated a conditional amendment to the zoning map of the City, by petition addressed to the City so as to modify the plan for the development of the Property.

E. Accordingly, it is necessary and appropriate to amend and fully restate the Original Proffer Agreement by this document.

F. Franciscus and South Moyock Development have requested approval of this Proffer Agreement.

G. The policy of the City is to provide for the orderly development of land for various purposes, including commercial purposes, through zoning and other land development legislation.

H. Franciscus and South Moyock Development desire 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.

I. The conditions outlined in this Agreement have been proffered by Franciscus and South Moyock Development and allowed and accepted by the City 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 the City.

NOW, THEREFORE, for and in consideration of the approval and acceptance by the City of this Proffer Agreement, Franciscus and South Moyock Development agree that they 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. Franciscus and South Moyock Development, their successors and assigns, grantees and other successors in title or interest to the Property, voluntarily and without any requirement by or exaction from the City or its governing body and without any element or compulsion or quid pro quo for zoning, rezoning, site plan, building permit or subdivision approval, make the following declaration of conditions and restrictions governing the use and physical development and operation of the Property, and covenant and agree 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 Franciscus and South Moyock Development, their 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 as multifamily residences, together with all accessory uses.

2. The site shall be developed in substantial conformance with the conceptual site plan entitled "CONCEPTUAL DESIGN OPTION 'B', THE TIDES, CITY OF HAMPTON, VIRGINIA", dated June 23, 2016, prepared AES Consulting Engineers (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. Significant changes in the Conceptual Site Plan

may be made to accommodate environmental, engineering, architectural, topographic 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.

3. There shall be a maximum of five (5) buildings containing ten (10) units per building, and a minimum of fourteen (14) buildings containing five (5) units per building; however, in no event shall the development contain more than a total of one hundred twenty-five (125) units. The minimum unit size shall be 1,206 square feet.

4. The buildings shall be constructed in substantial conformance with the elevations entitled, "FIVEPLEX COASTAL ELEVATIONS @ NEW MARKET AND TENPLEX COASTAL ELEVATIONS", dated July 13, 2016, made by Franciscus Design Group, Inc., 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.

5. The exteriors of all four (4) sides of the buildings will be constructed primarily of premium vinyl siding, with panel thickness of .044" on the lap siding, .048" on the board and batten siding, and .100" on the shingle siding and with wind ratings from 180 mph to 210 mph. Such premium vinyl siding shall be installed to minimize seams or bowing and shadowing at the seams. The roofs of the buildings will be constructed of thirty (30) year architectural shingles and standing seam metal.

6. Courtyard focal points between buildings and locations overlooking the storm water management feature shall contain seating, together with either a fire pit, a fountain or a sculpture. Other similar amenities intended to provide a communal focal point may be provided in place of those previously listed with the approval of the Planning Director.

7. A pool and pool house will be provided as shown on the Conceptual Site Plan.

8. Franciscus and South Moyock Development (including their successors, assigns, or agents) shall make a good faith effort to install a walkway, constructed of concrete or decking, 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 for a unit intended for sale to a third party, Franciscus and South Moyock Development 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, Franciscus and South Moyock Development 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. If the walkway and/or kayak launch are not legally permissible under any circumstance due to applicable environmental and other development regulations Franciscus and South Moyock Development 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 Franciscus and South Moyock Development pursuant to this condition shall be provided to the City upon request.

9. All exterior lighting, both site and building, 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 site.

10. Subject to the approval of the Public Works Department, a dedicated left turn lane from Power Plant Parkway into the development shall be constructed, and shall be completed prior to the issuance of a certificate of occupancy for the first unit to be sold to a third party (specifically excluding any model units).

11. A sidewalk will be constructed along the Easterly boundary of the Property along Power Plant Parkway which will extend the full length of the street frontage and will tie into the sidewalk located at the bridge to the South. The sidewalk will be set back from the curb a sufficient distance to accommodate street trees, which will be planted between the sidewalk and the curb. The sidewalk shall be a minimum of five feet (5') in width.

12. All phases of the proposed development shall comply with all ordinances of the City of Hampton.

13. Franciscus and South Moyock Development acknowledge that further lawful conditions and restrictions on the Property may be required by the City during the detailed site plan review and administration of applicable codes and regulations of the City by all appropriate agencies and departments of the City, which shall be observed or performed by Franciscus and South Moyock Development. Franciscus and South Moyock Development further acknowledge that additional further lawful conditions or restrictions may be imposed by the City as a condition of approvals, including, but not limited to, final site plan approval.

14. All references to zoning districts and the 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 City.

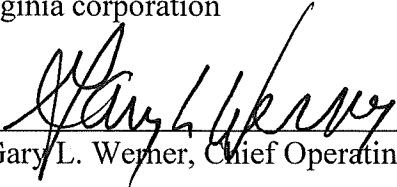
15. Franciscus and South Moyock Development covenant and agree that (a) the Zoning Administrator of the City of Hampton, Virginia, shall be vested with all necessary authority on behalf of the governing body of the City of Hampton, Virginia, to administer and enforce the foregoing conditions and restrictions specified in this Agreement, including (i) the authority to order correction of any noncompliance with such conditions, and (ii) the authority to bring legal action or suit to ensure compliance with such conditions, including mandatory or prohibitory injunction, abatement, damages or other appropriate action, suit or proceedings; (b) 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 (c) the Zoning Map shall show by an appropriate symbol on the Map the existence of conditions attached to the zoning of the subject Property on the Map and that the ordinance and conditions are readily available and accessible for public inspection in the office of the Zoning Administrator and in the Planning Department; and (d) this Agreement shall be recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia and indexed in the names of Franciscus Homes, Inc., South Moyock Development, LLC, and the City of Hampton.

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SIGNATURES FOLLOW


WITNESS the following signature and seal:

FRANCISCUS HOMES, INC.,
a Virginia corporation

By: 
Gary L. Werner, Chief Operating Officer

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Virginia Beach, to wit:

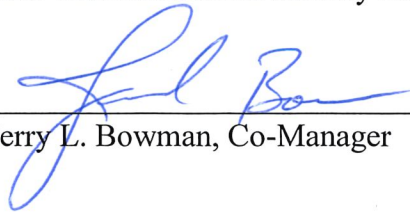
The foregoing instrument was acknowledged before me this 18 day of August, 2016, by Gary L. Werner, Chief Operating Officer of Franciscus Homes, Inc., a Virginia corporation, for and on behalf of the corporation. The said Gary L. Werner is personally known to me or has produced satisfactory evidence of identity.

 Heidi M. Macemore
Notary Public

My Commission expires: April 30, 2017
Registration number: 7562623
[Affix Notarial Stamp]


HEIDI MARIE MACEMORE
NOTARY PUBLIC
REGISTRATION # 7562623
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2017

SOUTH MOYOCK DEVELOPMENT, LLC,
a North Carolina limited liability company

By: 
Jerry L. Bowman, Co-Manager

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Virginia Beach, to wit:

The foregoing instrument was acknowledged before me this 18 day of August, 2016, by Jerry L. Bowman, Co-Manager of South Moyock Development, LLC, a North Carolina limited liability company, for and on behalf of the company. The said Jerry L. Bowman is personally known to me or has produced satisfactory evidence of identity.

 Heidi M. Macemore
Notary Public

My Commission expires: April 30, 2017
Registration number: 7562623
[Affix Notarial Stamp]

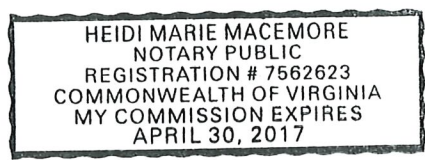


Exhibit A

Legal Description

All that certain tract, piece or parcel of land located in the City of Hampton, Virginia, identified as “PARCEL A1, SOUTH MOYOCK DEVELOPMENT LLC, LAND RECORD SERIAL NUMBERS: 3004765, 3004766, 3004773, 3004774, 3004775, & 3004776, 25.674 ACRES ±” on that certain plat entitled “PROPERTY LINE VACATION PLAT, TIDES AT NEWMARKET, DESIGNATED AS LAND RECORD SERIAL NUMBERS: 3004765, 3004766, 3004773, 3004774, 3004775, & 3004776, HAMPTON, VIRGINIA”, dated May 24, 2016, made by Hayden Frye and Associates, Inc., Land Surveyors, and recorded in the Clerk’s Office of the Circuit Court for the City of Hampton, Virginia, in Plat Book 4, page 159.