

Prepared by:
COLISEUM CENTER LLC
c/o Marcus C. Galt
233 Ross Road
Henrico, Virginia 23229

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

LRSN: #7001267

PROFFER AGREEMENT

THIS PROFFER AGREEMENT ("Agreement") made this _____ day of _____, 20__, by and between COLISEUM CENTER, 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, Virginia, 23669.

RECITALS

- A. Coliseum Center, LLC is the owner of a certain parcel of property located in the City of Hampton, addressed 1909 Commerce Drive (LRSN: #7001267) as further described on Exhibit A.
- 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 Limited Commercial (C-2) and

Coliseum Central Overlay (O-CC) Districts to Multifamily Residential (MD-4) and Coliseum Central Overlay (O-CC) Districts.

- C. Grantor has requested approval of this Agreement. Grantee's policy is to provide for the orderly development of land for various purposes, through zoning and other land development legislation.
- D. 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.
- E. The conditions outlined in this Agreement have been proffered by Grantor and allowed and accepted by Grantee as part of the amendment of the City Zoning Ordinance and 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 Grantor, (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 requirement by or exaction from Grantee or its governing body 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 only permitted use of the Property shall be as multifamily dwelling, together with all accessory uses.
- 2) The Property shall be developed in substantial conformance with the proposed plat entitled "1909 COMMERCE DRIVE - CONCEPTUAL SITE PLAN LAYOUT" dated June 2, 2023, prepared by Poole and Poole Architecture, LLC (2PA) ("The Conceptual Site Plan"), 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. The property shall be developed such that the landscaping shall, to the maximum extent practicable, substantially conform to the landscaping depictions on the Conceptual Site Plan. Minor changes in the Conceptual Site Plan may be made to accommodate environmental, engineering, architectural, topographic, or other development conditions, or site plan and subdivision requirements as required by the law and subject to the approval of the Director of Community

Development or their designee. 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 plan or plat.

- 3) The buildings shall be constructed in substantial conformance with the elevations entitled, "1909 COMMERCE DRIVE - CONCEPTUAL DESIGN & CONCEPTUAL ELEVATIONS", dated June 2, 2023, made by Poole and Poole Architecture, LLC (2PA), 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. 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. Minor changes in the Elevations may be made to comply with regulations following the ruling on any variance request regarding the minimum square footage of residential units and subject to the approval of the Director of Community Development or their designee. 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 previously filed elevations.
- 4) The proposed development shall meet or exceed the requirements of the Coliseum Central Design Guidelines, dated January 12, 2018, which shall be

placed on file with the Planning Division of the Community Development Department.

- 5) The subject development is proposed at approximately 382 residential units with up to a 15% reduction in unit count subject to market conditions and prevailing codes and variances at the time of permit application.
- 6) Parking will be designed to meet or exceed the minimum parking allowance for residents and guests as required by the governing zoning at the time of permit application.
- 7) Eighty (80) percent of all proposed plant material: deciduous, evergreen, and understory trees, and deciduous and evergreen shrubs, shall be native plants as listed in the "Native Plant Material for Southeast Virginia" Guide.
- 8) All exterior lighting shall comply with the "City of Hampton Outdoor Lighting Policy and Procedures" and shall be directed downward and inward to the site.
- 9) Security cameras will be provided within the garage and exterior of the property.
- 10) Community amenities shall include, but will not be limited to, fitness and meeting rooms. Additional amenities may be provided based on market demand.
- 11) It is understood that all phases of the proposed project shall comply with all ordinances of the City of Hampton.
- 12) Grantor acknowledges that 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.

13) All references hereinabove to zoning districts and to regulations applicable thereto, refer to City Zoning Ordinance of the City of Hampton, in force as of the date the conditional rezoning amendment is approved by the Grantee.

14) 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 THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURES FOLLOW

WITNESSE the following signature and seal:

Grantor:

Coliseum Center, LLC

Marcus C. Galt

By: *MCG*, MANAGER

STATE OF VIRGINIA

City of Hampton, to-wit:

I, Melissa Norton, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Marcus C. Galt, whose name is signed to the foregoing instrument as (title) manager of Coliseum Center, LLC, a Virginia Limited Liability Company, has sworn to, subscribe, and acknowledge the same before me in the City and State aforesaid, this day of July 21, 2023 on behalf of said Company. He/She is personally known to be true or has produced Virginia Driver's License as identification.

Melissa Norton
Notary Public

My commission expires: January 31, 2025

Registration Number: 7949794



Melissa Ingram Norton
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7949794
My Commission Expires
January 31, 2025

EXHIBIT A

LEGAL DESCRIPTION

ALL THOSE certain pieces or parcels of land, situate, lying and being in the City of Hampton, Virginia, containing in the aggregate 4.880 Acres, identified as "PARCEL F 4.730 Acres" and "PARCEL G 0.150 Acres", all as shown on that certain plat entitled, "PLAT OF 2 PARCELS OF LAND OWNED BY THE WALNUT HOMES COMPANY AND THE CITY OF HAMPTON, VIRGINIA, CITY OF HAMPTON, VIRGINIA", dated December 11, 1996, prepared by Resource International, Ltd., Environmental Consultants & Designers, Ashland, Virginia, a copy of which said plat is recorded in Deed Book 1198, at page 1928.

BEING the same real estate conveyed to Coliseum Center LLC, a Virginia limited liability company, by Special Warranty Deed from Colonial Holdings, Inc., a Virginia corporation, dated June 16, 2022, recorded June 16, 2022, in the Clerk's Office, Circuit Court, City of Hampton, Virginia, as Instrument No. 220010689.