

Tax Parcel Numbers: 4001445, 4001446  
4001447, 4001448

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

### PROFFER AGREEMENT

THIS PROFFER AGREEMENT (“Agreement”) made as of \_\_\_\_\_, 2015, by and between FRANCISCUS HOMES, INC., a Virginia corporation [index as a grantor]; SLL PROPERTIES, L.L.C., a Virginia limited liability company [index as a grantor]; PAMELA TAYLOR GREGORY [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. Franciscus Homes, Inc. (“Franciscus”) is the contract purchaser of four parcels of real property (the “Property”) located in the City of Hampton, Virginia, more particularly described on Exhibit “A” attached hereto and as follows:

1. 960 Big Bethel Road, Hampton, Virginia 23666, RPC 4001445, owned by SLL Properties, L.L.C., currently zoned C-2.
2. 1014 Big Bethel Road, Hampton, Virginia 23666, RPC 4001446, owned by SLL Properties, L.L.C., currently zoned R-11.

3. 1020 Big Bethel Road, Hampton, Virginia 23666, RPC 4001447, owned by Pamela Taylor Gregory, currently zoned R-11.

4. 1018 Big Bethel Road, Hampton, Virginia 23666, RPC 4001448, owned by Pamela Taylor Gregory, currently zoned R-11.

B. In connection with Franciscus' purchase of the Property, and with the consent of all of the current owners of the Property, as evidenced by their respective signatures below, Franciscus has initiated a conditional amendment to the zoning map of the City of Hampton, Virginia (the "City"), by petition addressed to the City so as to change the zoning classification of the Property from C-2 and R-11 to MD-2.

C. Franciscus has requested approval of this Proffer Agreement.

D. 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.

E. Franciscus 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 Franciscus 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 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. Franciscus, its successors, 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 foregoing 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, 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 as multifamily residences, together with all accessory uses.

2. The site shall be developed in substantial conformance with the conceptual site plan entitled "CONCEPTUAL SITE LAYOUT PLAN OF BIG BETHEL ROAD PROPERTY, HAMPTON, VIRGINIA", dated November 10, 2015, prepared by MSA, P.C. (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 fifteen (15) buildings, with each building containing a maximum of five (5) units, for a total maximum of seventy-five (75) units.

4. The buildings shall be constructed in substantial conformance with the elevations entitled, "Big Bethel Road, Hampton, VA", dated October 20, 2015, 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. At the sole cost of Franciscus, all internal streets shall include on-street parking, sidewalks, street trees and pedestrian-scale lighting. Sidewalks shall connect individual residences, the public sidewalk along Big Bethel Road, and the community paths throughout the

common open space within the development. All proposed connections to public rights-of-way shall be preapproved by the Department of Public Works.

7. All common open spaces shown on the Conceptual Site Plan shall contain at least one amenity, including multi-use paths, fountains, seating areas, benches or grills. Other similar amenities may be provided in place of those previously listed with the approval of the Director of Community Development or his designee. The largest storm water management facility shown on the Conceptual Site Plan shall incorporate fountains.

8. 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.

9. Subject to the approval of the Hampton Public Works Department, Franciscus will upgrade the signal at the intersection of Big Bethel Road and Old Big Bethel Road to a four way signalized intersection.

10. An opaque PVC privacy fence with a minimum height of five feet (5') shall be constructed along the North and East property lines.

11. An aluminum decorative picket fence with 6" O.C. pickets at a height of between 42" and 48" shall be constructed along the Big Bethel frontage.

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

13. Franciscus acknowledges 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. Franciscus further acknowledges 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 covenants and agrees 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., SLL Properties, L.L.C., Pamela Taylor Gregory, 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, President

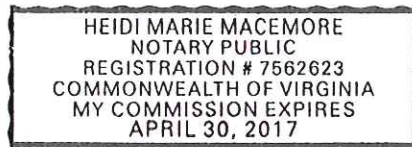
COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Virginia Beach, to wit:

The foregoing instrument was acknowledged before me this 21 day of October, 2015, by Gary L. Werner, President 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.



Notary Public

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





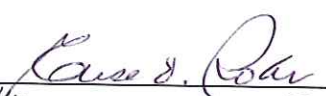
WITNESS the following signature and seal:

SLL PROPERTIES, L.L.C.,  
a Virginia limited liability company

By:   
J. Robert Harris, III, Manager

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Henrico, to wit:

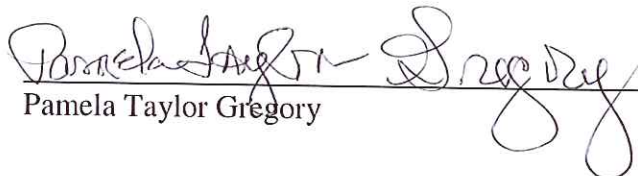
The foregoing instrument was acknowledged before me this 21 day of October, 2015, by J. Robert Harris, III, Manager of SLL Properties, L.L.C., a Virginia limited liability company, for and on behalf of the company. The said J. Robert Harris, III  is personally known to me or  has produced satisfactory evidence of identity.

  
Notary Public

My Commission expires: 11/15/15  
Registration number: 201857  
[Affix Notarial Stamp]




WITNESS the following signature and seal:

  
Pamela Taylor Gregory

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Hampton, to wit:

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of October, 2015, by Pamela Taylor Gregory  who is personally known to me or  who has produced satisfactory evidence of identity.

  
Notary Public

My Commission expires: 5/31/2016  
Registration number: 202869  
[Affix Notarial Stamp]



## Exhibit A

### Legal Description

#### 960 Big Bethel Road, Hampton, Virginia 23666, RPC 4001445

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia, known, designated and described as "121,162 S.F., 2.78 Ac." as shown on that certain plat entitled, "SURVEY OF PROPERTY PREPARED FOR MARIO BUFFA, BEING A PARCEL OF LAND CONTAINING 2.78 ACRES, LYING ALONG BIG BETHEL ROAD, CITY OF HAMPTON, VIRGINIA", dated November 26, 2005, made by Peninsula Engineering & Surveying, a copy of which said plat is attached to that deed from Hester Saunders Ward et als to SLL Properties, LLC dated May 10, 2006 and recorded in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia as Instrument Number 060014401.

#### 1014 Big Bethel Road, Hampton, Virginia 23666, RPC 4001446

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia and being more particularly bounded and described as follows: Beginning at an iron pin situate in the southern edge of an existing dirt road at its intersection point with Royce Drive, thence in a line common with property now or formerly of Kenneth R. Miller and Sandra S. McKeen, South 20 degrees 00' 00" West a distance of 126.80 feet to an iron pin; thence North 79 degrees 39' 13" West a distance of 458.90 feet to an iron pin situate in the eastern right-of-way line of Big Bethel Road; thence following the eastern right-of-way line of Big Bethel Road in a northerly direction, which curve has a radius of 6.1514 feet and a length of 124.50 feet to an iron pin, which iron pin is situate at the intersection point between the aforesaid dirt road and Big Bethel Road; thence following the southern line of said dirt road South 79 degrees 54' 30" East a distance of 499.45 feet to an iron pin, all as shown on a certain plat made by Miller-Stephenson & Associates, P.C., Engineers, Surveyors and Planners, 5033 Rouse Drive, Virginia Beach, Virginia 23462, a copy of which plat is duly recorded in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia in Deed Book 958, page 1563.



1020 Big Bethel Road, Hampton, Virginia 23666, RPC 4001447

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia (formerly Wythe District, Elizabeth City County) and bounded on the North by other land now or formerly of Maud H. Morris, et als, on the East by the land now of formerly of Johnson, on the South by the land now or formerly of T. L. Saunders, and on the West by the land now or formerly of Maud H. Morris.

Less and excepting all that certain property conveyed to Earl S. Morris, Jr. and Clarice F. Morris, husband and wife, as tenants by the entireties, from Earl S. Morris and Gladys Morris, his wife, by deed dated August 17, 1953 and recorded in the Hampton Clerk's Office in Deed Book 209, page 369 and more particularly described therein.

Less and excepting all that certain property conveyed to the City of Hampton, Virginia by deed dated March 20, 1968 and recorded in the Hampton's Clerk's Office in Deed 404, page 486 and more particularly described therein.

1018 Big Bethel Road, Hampton, Virginia 23666, RPC 4001448

All that certain lot, piece or parcel of land located in the City of Hampton, Virginia, fronting one hundred feet (100') on the easterly side of Big Bethel Road (formerly Sawyer Swamp Road) and running back therefrom between parallel lines a distance of three hundred feet (300'), which said property is more particularly described as follows:

Beginning at a point on the easterly side of Big Bethel Road a distance of 75 feet in a northerly direction from the point where the northerly line of the right-of-way created by deed dated September 12, 1946 between E. S. Morris, et ux, which deed is recorded in the Clerk's Office of the Circuit Court of Hampton, Virginia in Deed Book 138, page 224, intersects the easterly line of Big Bethel Road, which said point of beginning is marked by an iron pipe, and from the point of beginning thus established running thence in an easterly direction a distance of 300 feet to a point marked by an iron pipe along a straight line approximately parallel with the northerly line of the above mentioned right-of-way and approximately at right angles with Big Bethel Road, running thence in a northerly direction along a straight line approximately parallel with the southerly line of Big Bethel Road a distance of 100 feet to a point marked by an iron pipe; running thence in a westerly direction in a straight line parallel with the line



constituting the southerly line of the property herein described, a distance of 300 feet to a point in the easterly line of Big Bethel Road marked by an iron pipe; running thence in a southerly direction along a line coincident with the easterly line of Big Bethel Road a distance of 100 feet to the point of beginning.

Less and excepting all that certain property conveyed to the City of Hampton, Virginia by deed dated March 14, 1968 and recorded in the Hampton Clerk's Office in Deed Book 404, page 285 and more particularly described therein.