

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

**LRSN: 6001077, 6000966,
6001076, and 6001075**

PROFFER AGREEMENT

THIS PROFFER AGREEMENT (“Agreement”) made this ____ day of _____, 20__, by and between **JB HOLDINGS, LLC**, a Kansas limited liability company (“JB”) (index as “Grantor”); **D.R. HORTON, INC.**, a Delaware corporation (“Horton”) (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. JB is the owner of a certain parcel of property located in the City of Hampton, herein known as 31, 39, 41, and 49 Semple Farm Road, LRSN: 6001077, 6000966, 6001076, and 6001075, and more fully described on “Exhibit A” (the “Property”).
- B. JB and Horton (collectively, “Grantor”) intend to conclude a transfer of ownership of the Property to Horton in order to facilitate Horton’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 One Family Residential (R-11) District— to Townhouse Multifamily Residential (MD-1) 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 “YORKHAMPTON TOWNS MAGRUDER AREA, DISTRICT 2 HAMPTON, VIRGINIA CONCEPTUAL LANDSCAPE PLAN”, signed July 31, 2024, and prepared by Koontz Bryant Johnson Williams (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 minimum of 60 residential dwelling units and a maximum of 67 residential dwelling units (each, a “Townhouse Unit” and collectively,

the “Townhouse Units”) constructed on the Property.

2. The Townhouse Units to be constructed on the Property shall be in substantial conformance with one (1) of the elevations, entitled “D.R. HORTON – America’s Builder House, Name: DELMAR, Drawing Title Front Elevations”, dated December 20, 2023, “D.R. HORTON – America’s Builder House, Name: DELMAR, Drawing Title Side Elevations”, dated December 20, 2023, “D.R. HORTON – America’s Builder House, Name: DELMAR, Drawing Title Rear Elevations”, dated December 20, 2023, prepared by Wade Architecture (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. An Exterior Color Scheme shall be submitted for review and approval by the Director of Community Development or their designee prior to issuance of building permits. No two (2) adjacent units shall have an exterior color scheme with the primary building material consisting of the same principal color. Compliance with the foregoing requirement shall mean a principal color that is a separate and distinguishable color, not a varying shade of the same color.
4. The construction of the Townhouse 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, 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.
 - ii. No two (2) adjacent Townhouse Units shall have the same front elevation as distinguished by the set of elevations referenced in condition B.2. Elevations should be differentiated by a combination of gable design and materials. Elevations may, alternatively, be differentiated by a combination of at least two of the following design elements: gables, porches, porticos, balconies, materials, and

textures.

- iii. Per the Elevations in condition B.2 above, the following front elevations shall be used in the configuration of the Townhouse Units described below: B3, B5, C5, D5, G2, and H4. In no event shall a front elevation be used more than twice on any one building.
 - aa. On three-unit buildings, both end units shall be one of the elevations listed above in this section B.4.iii;
 - bb. On the four-unit buildings, both end units shall be one of the elevations listed above in this section B.4.iii;
 - cc. On the five-unit buildings, both end units and the middle unit (front) shall be one of the elevations listed above in this section B.4.iii; and
 - dd. On the six-unit buildings, both end units shall be one of the elevations listed above in this section B.4.iii.
 - iv. Roof materials shall be 30-year architectural/dimensional asphalt composition shingles.
 - v. The Townhouse Units shall be constructed with a minimum of eighteen (18") inches raised slab foundation or crawl space to necessitate a minimum of two steps to access the front porch/stoop or first finished floor elevation of the unit.
 - vi. Foundations shall be clad with full-face brick veneer, brick skirting, stone veneer, or stone on all sides of each building, extending at a minimum from the ground to 18" in height.
 - vii. Each Townhouse Unit's primary front facade plane shall be set forward or setback of the adjacent unit's primary facade plane by a minimum of two (2) feet.
 - viii. Any vinyl siding shall be a minimum of 0.046 inches of thickness and a minimum of five inches (5") in width.
- C) The Property shall be subdivided in accordance with Chapter 35 of the Hampton City Code, subject to approval by the City of Hampton and recordation of a final subdivision plat, such that each Townhouse Unit is constructed on a fee simple lot.
- D) 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.
- E) The community amenities shall include, but not be limited to, community bike racks, community benches, community gazebo, children's playground, and community sidewalks. Other similar amenities intended to provide a 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) Grantor shall legally establish a property owners' association and ownership of

all community amenities shall be placed in said property owners' association, in accordance with Hampton City Code section 35-12.

- G) Development of the Property shall include the following resiliency and sustainability elements:
 - 1. The Townhouse 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. Two (2) electric vehicle charging stations shall be provided as shown on the Concept Plan.

- H) 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 Semple Farm Road, 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.

- I) Ground-mounted HVAC systems shall be screened from the right-of-way and adjacent properties through the use of landscaping or fencing.

- J) 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.

- K) It is understood that all phases of the proposed project shall comply with all ordinances of the Grantee.
- L) 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.
- M) 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.
- N) 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:

JB HOLDINGS LLC

By: Greg Johnson

Name: GREG JOHNSON

Its: MEMBER

STATE OF Kansas
COUNTY/CITY of Sedgwick, to-wit:

I, Kathleen S. Reitmeyer, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Greg Johnson, whose name is assigned to the foregoing instrument as (title) member of JB holdings LLC, a Kansas limited liability company, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 25th day of April, 2024 on behalf of said JB Holdings LLC. He/she ☒ is personally known to me or ☐ has produced _____ as identification.

Notary Public

My commission expires: July 21, 2026 Registration No. 1198625



[Signature Page to Proffer Agreement]

GRANTOR:

D.R. HORTON, INC.

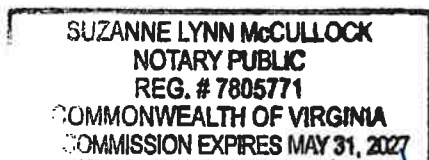
By: [Signature]

Name: Kyle Schnauffer

Its: City Manager

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

I, Suzanne McCulloch, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Kyle J. Schnauffer, whose name is assigned to the foregoing instrument as (title) City Manager of D.R. Horton, Inc., a Delaware limited liability company, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 25th day of April, 2024 on behalf of said .
☒ He/she ☐ is personally known to me or ☐ has produced as identification.



Notary Public

[Signature]

My commission expires: 5/31/27 Registration No. 7805771

Exhibit A
Legal Description

Parcel 1:

All that certain lot, piece or parcel of land situate, lying and being in the City of Hampton, Virginia, located on the southerly side of Semple Farm Road, containing 1.925 acres, more or less, and being more particularly described as follows: Beginning at a point on Semple Farm Road which is the North-east corner of the property herein conveyed and running thence S. 8 degrees 01 minutes 30 seconds E. along the boundary line of the property conveyed by deed of even date to Pearl Winder Veney, et als, to a point which is the Southeast boundary of the property herein conveyed; thence N. 80 degrees 40 minutes 00 seconds W. 140.79 feet to a point; thence N. 8 degrees 01 minutes 30 seconds W. 555.80 feet along a 40-foot right of way to a point on Semple Farm Road; thence in an easterly direction in an arc along Semple Farm Road 67.99 feet to a point; thence continuing in an arc along Semple Farm Road 48.46 feet to a point; thence N. 80 degrees 16 minutes E. 22.24 feet, more or less, along Semple Farm Road to the point or place of beginning, all as shown on a certain plat entitled, "PLAT SHOWING PARTIAL PARTITION OF WILLIE JOHNSON ESTATE, BEING LOCATED ON SEMPLE FARM ROAD, CITY OF HAMPTON, VIRGINIA," dated November 4, 1965, made by S. J. Glass, Certified Land Surveyor, a copy of which is attached to and made a part of a certain deed recorded in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia, in Deed Book 395, page 351. The said property herein conveyed being the westerly half of Parcel 2 as shown on said plat.

AND

Parcel 2:

All that certain lot, piece or parcel of and, located in the City of Hampton, Virginia, known, numbered and designated as Lot 11 as shown on that certain plat entitled "MAGRUDER. ESTATES, SECTION 3" made by William M. Sours, Surveyor, dated January 2, 1990, and recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia in Plat Book 10, at page 23.

AND

Parcel 3:

All that certain lot, piece or parcel of land with the privileges and appurtenances thereunto belonging, situate, and being in the City of Hampton, Virginia, and being known and designated as "PARCEL 'A' CATHERINE WHITE ESTATE 0.902 AC. +/-." As shown on a certain plat entitled, "PLAT SHOWING PROPERTY OF CATHERINE WHITE ESTATE, BEING LOT 8, JOHN WINDER FARM, SEMPLE FARM ROAD, CITY OF HAMPTON, VIRGINIA", dated May 16, 1973, made by S.J. Glass & Associates, Engineering Services, Hampton, Virginia, a copy of said plat is attached to and made a part of that certain deed dated September 10, 1979, recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 561, page 113.

AND

Parcel 4:

All that certain lot, piece or parcel of land with the privileges and appurtenances thereunto belonging, situate, and being in the City of Hampton, Virginia, and being known and designated as "PARCEL 'B' CATHERINE WHITE ESTATE 4.677 AC. +/-." As shown on a certain plat entitled, "PLAT SHOWING PROPERTY OF CATHERINE WHITE ESTATE, BEING LOT 8, JOHN WINDER FARM, SEMPLE FARM ROAD, CITY OF HAMPTON, VIRGINIA", dated May 16, 1973, made by S.J. Glass & Associates, Engineering Services, Hampton, Virginia, a copy of said plat is attached to and made a part of that certain deed dated September 10, 1979, recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 561, page 113.