

**LRSN: 5000040, 5000041,
5000042 and 5001596**

**Prepared by:
Lawrence G. Cumming (VSB No. 15820)
Kaufman & Canoles, P.C.
11815 Fountain Way, Suite 400
Newport News, VA 23606**

**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 _____, 2022, by and between **SARAH BONWELL HUDGINS FOUNDATION, INC.**, a Virginia corporation (“SBH”) [index as a grantor]; **WESTVIEW LANDING, LLC**, a Virginia limited liability company (“Westview”) [index as a grantor]; and **THE CITY OF HAMPTON**, a municipal corporation of the Commonwealth of Virginia (the “City”) [index as a grantee], with an address of 22 Lincoln Street, Hampton City Hall, Hampton, VA 23669.

RECITALS

A. SBH is the owner of certain parcels of real property (the “Property”) located in the City of Hampton, Virginia (LRSN 5000040, 5000041, 5000042 and 5001596), which are more fully described on **Exhibit “A”**.

B. SBH intends to conclude a transfer of ownership of the Property to Westview in order to facilitate development of the Property by Westview in accordance with the terms of this Agreement.

C. SBH and Westview (collectively “Applicants”) have initiated a conditional amendment to the zoning map of the City by petition addressed to the City so as to change the zoning classification of the Property from One Family Residential District R-11 and Langley Flight Approach District LFA-5 to Multifamily Residential District MD-3.

D. Applicants have requested approval of this Proffer Agreement.

E. 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.

F. Applicants 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.

G. The conditions outlined in this Agreement have been proffered by Applicants 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, Applicants 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. Applicants and their respective 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 of 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 SBH, 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 Layout Westview Landing, City of Hampton, Virginia”, dated October 22, 2021, last revised August 26, 2022, prepared by AES Consulting Engineers (the “Conceptual Plan”), a copy of which is on file with the Community Development Department and has been exhibited to the Hampton City Council for illustrative purposes and to provide justification for this rezoning action. Other than the changes described in condition 3 below, only minor changes in the Conceptual Plan may be made to accommodate environmental, engineering, architectural, topographic or other development conditions, or site/subdivision plan approval requirements as required by law and subject to the approval of the Director of Community Development or his designee. A copy of the final approved site plan shall be on file with the Planning Division of the Department of Community Development and shall supersede any previously filed Conceptual Plan.

3. Grantor acknowledges that the Conceptual Plan may need to be substantially modified after approval by the U.S. Army Corps of Engineers (“USACE”) of a jurisdictional determination, which may result in a change to the density, layout, and other features depicted on the Conceptual Plan. Approval of the rezoning and this Agreement shall not vest the Grantor in the development as shown on the Conceptual Plan to the extent that it is in conflict with a future USACE jurisdictional determination.

4. Notwithstanding any other provision of this Agreement, including the Conceptual Plan, (i) in no event shall the entire development contain more than the number of residential dwelling units permitted by the MD-3 Zoning District (each, a “Residential Unit” and collectively, the “Residential Units”), and (ii) in no event shall any building improvements be located within the Langley Flight Approach Zone-5, Accident Potential Zone-2, or the 70 dB DNL noise contour as those zones are currently configured.

5. The buildings to be constructed on the Property shall be in substantial conformance with the elevations entitled “New Residential Development Westview Landing Apartments”, dated November 5, 2021 (three-story buildings, four-story buildings and clubhouse), and dated December 6, 2021 (maintenance building, storage building and garage building), prepared by Cox, Kliewer & Company, P.C., (the “Elevations”), copies of which are on file with the Community Development Department which Elevations have been exhibited to 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 his designee. A copy of the final approved Elevations shall be on file with the Planning Division of the Community Development Department and shall supersede any previous Elevations.

6. The construction of the building shall be as follows:

a. The exteriors of all four (4) sides of the buildings will be constructed primarily of brick veneer with accents of fiber cement siding and prefabricated cellular PVC columns.

b. Roofing materials shall be architectural grade shingles.

7. Community amenities shall include, but will not be limited to, clubhouse, swimming pool, fitness center, grilling areas, car wash areas, electric vehicle charging stations, RV/boat storage area, dog/pet park, storage units and enclosed garages as shown on the Conceptual Plan. Other similar amenities may be provided in place of those previously listed with the approval of the Director of Community Development or his designee. Use of all amenities shall be limited to the apartment community residents only.

8. There shall be a twenty foot (20') wide landscape buffer (the "Landscape Buffer") that consists of a combination of existing trees and additional plant materials, as further described below, along those portions of the westerly and southerly boundaries of the site which have buildings, parking areas or other improvements adjoining residentially zoned parcels.

The Landscape Buffer shall provide an opaque screen of trees and shrubs from the ground to a minimum height of six feet (6') in substantial conformance with the illustration attached hereto as **Exhibit "B"** and made a part of this Agreement. Before installation or removal of any material in the Landscape Buffer, a landscape plan shall be reviewed and approved by the Director the Department of Community Development or his designee. Further, the Landscape Buffer shall consist of the following:

a. Vegetation: All existing trees within the Landscape Buffer shall be preserved, with the exception that all dead, diseased or damaged vegetation and invasive species, may be removed. All trees installed in the Landscape Buffer shall be dispersed throughout the required planting areas and shall be planted with a combination of single trees and groups of trees in a staggered, clustered or other pattern. Trees shall not be installed in a continuous single

row except where necessary and appropriate to meet screening buffer requirements. Shrubs shall be installed in groupings and integrated with trees.

b. Plant Specifications: All new trees installed shall be a combination of the following tree types: deciduous trees, evergreen trees, and understory trees. No more than fifty percent (50%) of the required trees shall be of any one type, nor shall more than twenty-five percent (25%) of the required trees be of any single species (e.g. maple, pine, oak, dogwood, holly, etc.).

All new trees and shrubs shall meet the following size requirements:

Plant Type	Installed Size	Mature Height Capability
Shade Tree	2" caliper	>50'
Evergreen Tree	10' height	>40'
Understory Tree	10' height	>20'
Evergreen Shrub	30" height	>6'

The Landscape Buffer shall be left in an undisturbed natural vegetative state with the exception of providing supplemental plantings and maintenance of the buffer as described in this Agreement. Pruning and trimming shall be limited to selective thinning of vegetation under two inch (2") caliper.

9. All exterior lighting, both site and building, shall consist of full cut-off fixtures that are directed inward and downward to the site.

10. It is understood that all phases of the proposed development shall comply with all ordinances of the City.

11. Further lawful conditions and restrictions may be required in accordance with City Code, City Zoning Ordinances and all applicable codes and regulations, by the City during detailed administrative and site plan reviews. Applicants acknowledge that the City Code and City Zoning Ordinances shall control if more restrictive than the proffered conditions.

12. All references in this Agreement to zoning districts and applicable regulations, refer to the City Zoning Ordinance of the City, in force as of the date the conditional rezoning amendment is approved by the City.

13. Applicants covenant and agree that (a) the Zoning Administrator of the City shall be vested with all necessary authority on behalf of the governing body of the City 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; (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 attaching to the zoning of the 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 Planning Department 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 names of the Applicants and the City.

WITNESS the following signatures and seals:

SIGNATURES ON FOLLOWING PAGES

SIGNATURE PAGE TO PROFFER AGREEMENT

Grantor:

SARAH BONWELL HUDGINS FOUNDATION, INC.

By: _____

Jennifer Register
Jennifer Register, President

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF York, to wit:

The foregoing instrument was acknowledged before me this 30 day of August, 2022, by Jennifer Register, President of Sarah Bonwell Hudgins Foundation, Inc., a Virginia corporation, for and on behalf of the corporation. The said Jennifer Register is personally known to me or has produced satisfactory evidence of identity.

Robyn R. Burrell

Notary Public

My Commission expires: January 31, 2024
[Affix Notarial Stamp]

ROBYN R. BURRELL
NOTARY PUBLIC
Commonwealth of Virginia
Registration No. 203383
My Commission Expires JANUARY 31, 2024

SIGNATURE PAGE TO PROFFER AGREEMENT

Grantor:

WESTVIEW LANDING, LLC

By: *Robert L. Mallory*
Robert L. Mallory, Manager

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Newport News, to wit:

The foregoing instrument was acknowledged before me this 19th day of August, 2022, by Robert L. Mallory, Manager of Westview Landing, LLC, a Virginia limited liability company, for and on behalf of the company. The said Robert L. Mallory is personally known to me or has produced satisfactory evidence of identity.

Kimberly K. Alexander
Notary Public

My Commission expires: July 31, 2026
[Affix Notarial Stamp]

Kimberly K. Alexander
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 287436
My Commission Expires July 31, 2026

Exhibit A

Legal Descriptions

PARCEL ONE: LRSN 5000041

All that certain tract, piece or parcel of land situate, lying and being on the City of Hampton, Virginia, containing 8.591 acres, more or less, and designated as Parcel "A" on a certain plat attached to deed dated August 15, 1959, from Edmund T. Seymore, et ux to Robert L. Freeman, et als, duly of record in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 285, Page 334, said plat being entitled "Plat Showing Property of E. T. Seymore Being Located on Big Bethel Road, Hampton, Virginia," dated August 19, 1959, and made by S. J. Glass & Associates, Engineers & Surveyors.

It Being the same property conveyed by deed dated June 9, 1967, from Robert L. Freeman and Dorothy C. Freeman, his wife, E. Fred Lowe, Jr. and Louise A. Lowe, his wife, C. Lear Ponton and Nora G. Ponton, his wife, and Pavilion Investment Co., a Virginia corporation, to Sarah Bonwell Hudgins Foundation, Inc., a Virginia corporation, recorded June 21, 1967 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 393, Page 744.

All that certain piece or parcel of land, lying and being in the City of Hampton, Virginia, and described as follows:

Beginning at a concrete monument located at the intersection of Thomas Nelson Drive and the 40' right-of-way to property of Sarah Bonwell Hudgins Foundation, Inc. Thence in an easterly 36.62' to a point. Thence S 10° 12'00" along a line a distance of 22.69'. Thence N 89° 27' 02" along a line a distance of 53.73'. Thence N 45° 26' 02" a distance of 29.66' to the point of beginning.

It being the same property conveyed by deed dated April 5, 1994 from Vivian Nadine Vest, widowed, to Sarah Bonwell Hudgins Foundation, Inc., recorded May 10, 1994 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 1106, Page 1864.

All that certain lot, piece or parcel of land situate, lying and being in the City of Hampton, Virginia, being a strip of land containing 0.63 acre, and more particularly described on that certain plat entitled, "Plat Showing Easement to be Granted by T. J. Dula to Peninsula Association for Retarded Children, Inc.", print of which is attached to the deed recorded in Deed Book 388, Page 134.

All that certain lot, piece or parcel of land situate, lying and being in the City of Hampton, Virginia, being a strip of land 20 feet in width, and more particularly described on that certain plat entitled, "Plat Showing Easement to be Granted by James S. D. Cumming to Peninsula Association for Retarded Children, Inc.", print of which is attached to the deed recorded in Deed Book 384, Page 342.

It Being the same property conveyed by deed dated May 1, 1967 from Peninsula Association For Retarded Children, Inc. to Sarah Bonwell Hudgins Foundation, Inc, recorded June 21, 1967 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 393, Page 742.

PARCEL TWO: LRSN 5000040

All that certain piece or parcel of land situate, lying and being in the City of Hampton, Virginia, containing 9.2206 acres, and shown on plat entitled "PLAT OF THE PROPERTY OF SARAH BONWELL HUDGINS FOUNDATION, INC. 9.2206ACRES, CITY OF HAMPTON, VIRGINIA",

made by Pyle Engineering Company, dated July 27, 1967, which said plat is recorded as an attachment to deed recorded in Deed Book 396, Page 786.

It being the same property conveyed by deed dated August 3, 1967 from E. F. Hazelwood and Roberta B. Hazelwood, his wife, David G. Blaylock and Martha Lee Blaylock, his wife, and Robert C. Cutler and Allison Cutler, his wife, to Sarah Bonwell Hudgins Foundation, Inc., a Virginia corporation, recorded August 24, 1967 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 396, Page 786.

PARCEL THREE: LRSN 5000042

All that certain piece, parcel or tract of land situate, lying and being in the City of Hampton, Virginia, containing 19.61 acres, more or less, as shown on a certain plat entitled "Plat Showing Proposed Road & Portion of Property of Robert L. Freeman, et als, Being the Easterly Portion of Parcel "B", E. T. Seymore Property Located Near Big Bethel & Battle Roads, City of Hampton, Virginia," made by S. J. Glass & Associates, dated June 2, 1964, a print of which plat is recorded as an attachment to deed recorded in Deed Book 350, Page 554.

It being the same property conveyed by deed dated December 30, 1966 from The Peninsula Association of Retarded Children, Incorporated, a Virginia corporation, to Sarah Bonwell Hudgins Foundation, Inc., a Virginia corporation, recorded February 9, 1967 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 388, Page 511.

It also being the same property conveyed by deed dated June 26, 1964 from C. Lear Ponton and Nora C. Ponton, his wife, Robert L. Freeman and Dorothy C. Freeman, his wife, E. Fred Lowe, Jr. and Louise A. Lowe, his wife, and Pavilian Investment Co., a Virginia corporation, to Peninsula Association For Retarded Children, Inc., a Virginia corporation, recorded July 8, 1964 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 350, Page 554.

PARCEL FOUR: LRSN 5001596

All that certain lot, piece or parcel of land lying and being in the City of Hampton, Virginia, consisting of 0.4356 acres, and shown on the survey entitled, "PLAT SHOWING A PARCEL OF LAND CONTAINING 0.4356ACRES.", dated June 25, 1998, made by Johnson, Baird & Associates, Civil Engineering & Land Surveying, Hampton, Virginia, a copy of which is attached to deed recorded in Deed Book 1267, Page 2072.

It being the same property conveyed by deed dated December 7, 1998 from Vivian Nadine Vest, widow, to Sarah Bonwell Hudgins Foundation, Inc., a Virginia non-profit corporation, recorded December 11, 1998 in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, in Deed Book 1267, Page 2072.

Exhibit B

