

Prepared by:
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Newport News, VA 23606

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

LRSN: 4000717

PROFFER AGREEMENT

THIS PROFFER AGREEMENT (“Agreement”) made this 30th day of November, 2022, by and between **ROMERO PROPERTIES, LLC**, a Virginia limited liability company (“Romero”) (index as “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, Va. 23669.

RECITALS

- A. Romero is the owner of a certain parcel of property located in the City of Hampton, herein known as LRSN Number 4000717, and more fully described on “Exhibit A” (the “Property”).
- 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 Residential Transition District RT-1 to Multifamily Residential District MD-4.
- C. Grantor has requested approval of this Agreement.
- D. 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.
- E. 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.
- F. 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 Hampton, (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 only permitted use of the Property shall be as multifamily residences, together with all accessory uses.
- B) The Property shall be developed in substantial conformance with the conceptual site plan entitled "Concept Plan NorthHampton Townhomes 924 Old Big Bethel Road Hampton, Virginia", dated November 30, 2022, and prepared by Draper Aden Associates (the "Master 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. Minor changes in the Master 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 his designee for consistency with the terms of this proffer. A copy of the final approved Master Plan shall be placed in the file with the Planning Division of the Department of Community Development and shall supersede any previous Master Plan.
- C) There shall be a maximum of 13 residential dwelling units (each, a "Residential Unit" and collectively, the "Residential Units") constructed on the Property.
- D) The buildings to be constructed on the Property shall be in substantial conformance with the elevations entitled: "A-4 Northampton Townes 5-Unit Townes Plan Code Used: International Residential Code 2018", dated September 28, 2022, and prepared by Kevin Urbina, Designer; "A-2 Northampton Townes 5-Unit Townes Plan Code Used: International Residential Code 2018", dated September 23, 2022, and prepared by Kevin Urbina, Designer; "A-4 Northampton Townes 4-Unit Townes Plan Code Used: International Residential Code 2018", dated September 23, 2022, and prepared by Kevin Urbina,

Designer; "A-2 Northampton Townes 4-Unit Townes Plan Code Used: International Residential Code 2018", dated September 23, 2022, and prepared by Kevin Urbina, Designer; (collectively, 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 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.

- E) The construction of the buildings shall be as follows:
 - 1. Acceptable building materials for the front, side and rear elevations of the buildings shall be brick, full-face brick veneer, cast stone, stone veneer, cement fiber board, and/or engineered wood (e.g. LP Smartside). Plywood and metal siding are not permitted.
 - 2. Acceptable trim materials are fiber cement board, engineered wood, and/or vinyl. Painted wood trim is not permitted.
 - 3. Roof materials shall be 30 year architectural/dimensional asphalt composition shingle .
- F) 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 his designee.
- G) The community amenity shall include, but is not limited to, a courtyard with grilling station and outdoor seating. 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 his designee.
- H) Development of the Property shall include the following resiliency and sustainability elements:
 - 1. The residential buildings constructed on the Property shall be designed to meet the 110 mile per hour wind load design requirements of the applicable building code.
 - 2. Pervious or grass pavers/paving systems shall be used within the driveway areas of each residential dwelling unit as shown generally on the Master Plan.
 - 3. One (1) electric vehicle charging station that can serve two (2) vehicles shall be provided at the visitor parking area.
 - 4. 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.

- I) Prior to final site plan approval for development of the Property, a landscape plan meeting the requirements of the City of Hampton Landscape Guidelines shall be reviewed and approved by the Director of Community Development or his designee.
- J) Ground-mounted HVAC systems shall be screened from the right-of-way and adjacent properties through the use of landscaping and/or fencing.
- K) 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 his designee.
- L) It is understood that all phases of the proposed project shall comply with all ordinances of the City of Hampton.
- M) 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.
- N) 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.
- O) 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:

ROMERO PROPERTIES, LLC

By: 

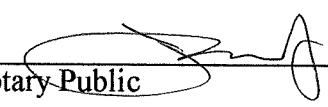
Name: Saul E Romero

Its: Managing Member

COMMONWEALTH OF VIRGINIA

COUNTY/CITY of Fairfax, to-wit:

I, Kyle Kennedy, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Saul E. Romero, whose name is signed to the foregoing instrument as (title) manager of Romero Properties, LLC, a Virginia limited liability company, has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 1 day of December, 2022 on behalf of said Romero Properties LLC. He/she ☐ is personally known to me or ☒ has produced VA Drivers License as identification.


Notary Public

My commission expires: 08/31/2024 Registration No. 7516972

KYLE KENNEDY
NOTARY PUBLIC
REG # 7516972
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 08/31/2024

Exhibit A
Legal Description

ALL that lot, piece, or parcel of land known, numbered, and designated as "924 Big Bethel Road 1.3 Acres", being PIN 4000717 and as shown on that certain map entitled "Physical Survey of 924 Big Bethel Road, 1.3 Ac, (P.B. 89, P. 156) Hampton, Virginia for BSA Ventures, L.L.C." dated 07-06-22 and prepared by Hayden Frye and Associates, Inc. Land Surveyors; said parcel being more particularly described as follows:

Beginning at an iron pipe found on the eastern right-of-way line of Old Big Bethel Road, said iron pipe being approximately 630 feet south of the intersection with Big Bethel Road; thence leaving said eastern right-of-way line of Old Big Bethel Road in an easterly direction N 83° 18' 35" E 377.40 feet to an iron pin found on the western right-of-way line of Big Bethel Road; thence turning in a southerly direction and following the said western right-of-way line of Big Bethel Road along a curve to the right, having a radius of 523.62 feet and an arc length of 150.62 feet to an iron pipe found; thence turning and leaving said western right-of-way line of Big Bethel Road in a westerly direction S 84° 25' 02" W 399.20 feet to a point on the aforementioned eastern right-of-way line of Old Big Bethel Road; thence turning and following the said eastern right-of-way line of Old Big Bethel Road in northerly direction N 07° 04' 08" W 140.64 feet to an iron pipe found, being the aforementioned point of beginning. Said parcel containing 56,624 square feet or 1.30 acres, more or less.