

150010679

Tax Parcels: 4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029

Prepared By: Vernon M. Geddy, III, Esquire (VSB No: 21902)  
Geddy, Harris, Franck & Hickman  
1177 Jamestown Road  
Williamsburg, VA 2318

#### PROFFERS

THESE PROFFERS are made this 15<sup>th</sup> day of October, 2014 by UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership(together with its successors in title and assigns, the "Owner").

#### RECITALS

A. Owner is the owner of six parcels of land located in James City County, Virginia, being Tax Parcel No's.4812200020, 4812200025, 4812200026, 4812200027, 4812200028 and 4812200029, containing approximately 24.54 acres, more or less, and being more particularly described on Schedule A hereto (the "Property").

B. Franciscus Homes has contracted to purchase Tax Parcels 4812200020 and 4812200029 of the Property contingent upon approval of the requested rezoning. Upon taking title to that portion of the Property, Franciscus Homes shall be an "Owner" as defined herein.

C. The Property is designated Mixed Use on the County's Comprehensive Plan Land Use Map and is now zoned B-1 and is subject to the approved special use permit Master Plan for Williamsburg Crossing Shopping Center. Owner has applied to rezone the Property from B-1 to MU, Mixed Use, with proffers.

C. Owner has submitted to the County a master plan entitled "The Promenade at John Tyler" prepared by Clark Nexsen dated October 6, 2014 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

D. Owners desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned MU in the form of the following Proffers.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

#### CONDITIONS

1. Cash Contributions. (a) A one-time contribution shall be made to the County of \$5,556.67 for each single family attached dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for school uses.

(b) A one-time contribution shall be made to the County of \$61.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for library uses.

(c) A one-time contribution shall be made to the County of \$71.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for fire/EMS uses.

(d) A one-time contribution shall be made to the County of \$324.63 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for parks and recreational purposes.

(e) A one-time contribution shall be made to the James City Service Authority of \$1,030.00 for each dwelling unit constructed on the Property, subject to paragraph (f) below. Such contributions shall be used by the County for water system uses.

(f) The cash contributions proffered in paragraphs (a) through (e) above shall be reduced in accordance with Section 3 of the County's Housing Opportunities Policy as shown in the table in Proffer 2 below.

(g) Such per unit contributions shall be paid to the County after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the unit in question.

(h) The per unit contribution amounts shall consist of the amounts set forth in paragraphs (a) through (e) plus any adjustments included in the Marshall and Swift Building Costs Index, Section 98, Comparative Cost Multipliers, Regional City Averages (the "Index") from 2014 to the year a payment is made if payments are made after on or after January 1, 2015, subject to reduction as provided in paragraph (f). The per unit contribution amount shall be adjusted once a year with the January supplement of the Index of the payment year. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in the preceding paragraphs of this Section. In the event that the Index is not available, a reliable government or other independent publication evaluating information heretofore used in determining the Index (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

2. Housing Opportunities. All of the dwelling units permitted on the Property shall be offered for sale or made available for rent at prices that are targeted at households earning 30% to 120% of the Area Median Income ("AMI") as provided below:

Table 1 – 190 units on Parcels 4812200020 and 4812200029

Units targeted to (percent of	Percent of dwelling units	Number of units	Percentage cash proffer	2014 Price ranges per
-------------------------------	---------------------------	-----------------	-------------------------	-----------------------

AMI	required		reduction	Housing Opportunities Policy Guide*
30% to 60%	16%	30	100%	\$99,436 to \$173,376
Over 60% to 80%	64%	120	60%	\$173,377 to \$242,386
Over 80% to 120%	20%	40	30%	\$242,387 to \$380,407

Table 2 – 14 units on Parcels 4812200025, 4812200026, 4812200027 and 4812200028

Units targeted to (percent of AMI)	Percent of dwelling units required	Number of units	Percentage cash proffer reduction	2014 Price ranges per Housing Opportunities Policy Guide*
30% to 60%	16%	2	100%	\$99,436 to \$173,376
Over 60% to 80%	64%	9	60%	\$173,377 to \$242,386
Over 80% to 120%	20%	3	30%	\$242,387 to \$380,407

\* Per the Housing Opportunities Policy Guide price ranges are set annually by the County's Office of Housing and Community Development based on the definitions in the Policy.

The forgoing affordable/workforce dwelling units shall be provided consistent with the criteria established by the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2009 Comprehensive Plan; provided, however, that if the County amends the Housing Opportunities Policy as in effect as of the date of approval of the requested rezoning to increase the targeted income ranges or otherwise make the Policy otherwise less burdensome on the Owner, the Owner shall only be required to comply with the amended Policy. With respect to affordable and workforce rental units provided pursuant to this proffer, if any, Owner shall submit an annual report for each year of the required 30 year term to the County Director of Planning on or before January 30 of the current year identifying the location of the units and the rental rates charged demonstrating such rates are within the specified affordable and workforce housing income range. With respect to affordable/workforce rental units, at the time such units are provided in accordance with this Proffer a notice in form approved by the County Attorney shall be recorded in the County land records providing notice that the units are subject to the County's Housing Opportunities Policy adopted by the Board of Supervisors on November 27, 2012 and in effect as of the date of approval of the requested rezoning. If an affordable/workforce rental unit is subsequently sold in accordance with the sale requirements of this proffer, the notice will be released from the unit sold. With respect to for sale affordable and workforce units provided pursuant to this proffer, a soft second mortgage meeting the requirements of the Housing Opportunities Policy or other instrument approved in advance by the County Attorney shall be executed by the initial purchaser thereof and recorded against the unit to assure the unit continues to meet the

requirements of the Housing Opportunities Policy and a copy of the settlement statement for the sale shall be provided to the Director of Planning. In addition, each deed to an affordable or workforce for sale unit shall include a right of first refusal in favor of the County in the event a subsequent owner desires to sell the unit. All affordable or workforce units provided pursuant to this Proffer shall be rented or sold to persons whose incomes fall within the qualifying income ranges used to determine the prices/rental rates under the Housing Opportunities Policy.

3. Archaeology. A Phase I Archaeological Study for the Property shall be submitted to the Director of Planning for review and approval prior to issuance of a land disturbing permit. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation*, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's

*Professional Qualification Standards.* All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon. This proffer shall be interpreted in accordance with the County's Archaeological Policy adopted by the County on September 22, 1998.

4. Nutrient Management Plan. The Owner shall be responsible for contacting an agent of the Virginia Cooperative Extension Office ("VCEO") or, if a VCEO agent is unavailable, a Virginia Certified Nutrient Management Planner to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Plans") for the Property. The Plan shall be submitted to the County's Engineering and Resource Protection Director for his review and approval prior to the issuance of the 50<sup>th</sup> certificate of occupancy for buildings on the Property by the County. The property owners association for the Property shall be responsible for ensuring that any nutrients applied to common areas owned or controlled by the association within the Property are applied in accordance with the Plan.

5. Water Conservation. The Owner shall be responsible for developing water conservation standards for the Property to be submitted to and approved by the James City Service Authority ("JCSA"). The standards shall address such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of drought resistant native and other adopted low water use landscaping materials and warm season turf on lots in areas with appropriate growing conditions for such turf and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources. The standards shall be approved by the JCSA prior to final subdivision or site plan approval.

6. Road Repair and Dedication. Prior to issuance of the first certificate of occupancy for a dwelling unit on the Property, (i) either the deficiencies listed in the punch list dated September

15 made by the Virginia Department of Transportation (“VDOT”) for Kingsway and “Road A” shall have been corrected and inspected by VDOT such that the roads are eligible for acceptance into the Commonwealth’s secondary road system or the work necessary to correct such deficiencies shall have been bonded in form satisfactory to the County Attorney and (ii) the plat necessary to dedicate the right of way for such roads for public use shall have prepared and submitted to the County, with all required property owner signatures.

7. Architectural Guidelines. Prior to final approval of a site plan for development of the Property, Owner shall prepare and submit design guidelines to the Director of Planning for review and approval setting forth design and architectural standards for the development of the Property generally consistent with the typical architectural elevations included in the Community Impact Statement submitted with the Application for Rezoning and addressing items such as architectural features, color scheme, roof lines, building materials, streetscape improvements and landscaping (the “Guidelines”) and requiring architectural consistency between the residential and commercial buildings developed on the Property. Once approved, the Guidelines may not be amended without the approval of the Director of Planning. All building plans and building elevations shall be generally consistent with the Guidelines. Prior to the issuance of final site plan approval for each building on the Property, architectural plans for such building shall be submitted to the Director of Planning for his review for general consistency with the Guidelines. The Director of Planning shall review and either approve or provide written comments settings forth changes necessary to obtain approval within 30 days of the date of submission of the plans in question. All buildings shall be constructed in accordance with the approved plans. In the case of plans that will be used on more than one building, Director of Planning approval need only be obtained for the initial building permit.



8. Community Character Corridor Buffer. The Community Character Corridor buffer along Route 199 shall have an average width of at least 50 feet. A landscaping plan for this buffer shall be shown as part of the initial building site plan, or shall be submitted as a separate plan concurrent with the initial building site plan. The buffers shall contain enhanced landscaping in accordance with the County's Enhanced Landscaping Policy as adopted April 9, 2013 and shall be consistent with the narrative description and conceptual cross-section of the buffer submitted with the Application for Rezoning. The landscaping shown on the approved landscape plan(s) shall be installed or its installation during the next appropriate growing season bonded in form approved by the County Attorney prior to issuance of a certificate of occupancy for the initial building on the Property, unless other arrangements are approved by the Planning Director, or his designee, in writing.

9. Condominium Owners Association. There shall be organized a condominium owner's association or associations (the "Association") as required by the Virginia Condominium Act (the "Act") in accordance with Virginia law in which all residential condominium unit owners in the Property, by virtue of their property ownership, shall be members.

10. Private Streets. Any and all streets on the Property may be private. Pursuant to Section 24-528 of the Zoning Ordinance, private streets within the Property shall be maintained by the Association. The condominium instruments shall require the Association to create, fund and maintain a reserve for capital components, including private roads, in amounts determined in accordance with the Act and conduct capital reserve studies and adjust such reserves in accordance with the Act.

11. Community Spaces. The clubhouse and pool, two welcome parks, pocket park and community park shown on the Master Plan shall be installed prior to the County being obligated

to issue certificates of occupancy for more than 48 residential units on the Property. The Public Square shown on the Master Plan shall be installed prior to the County being obligated to issue certificates of occupancy for the first building in the area designated on the Master Plan as M (EGC).

12. Bus Pull-Off/Shelter. Prior to final development plan approval for development of the Property, Owner shall have consulted with Williamsburg Area Transit Authority (“WATA”) regarding the need for a bus pull-off area and a bus shelter on the Property. If the Williamsburg Area Transit Authority determines there is a need for a bus pull-off area and a bus shelter on the Property, such bus pull-off area and bus stop shelter shall be shown on the development plans for the Property in a location approved by Owner and WATA. Such bus pull-off area and bus stop shelter shall be installed prior to the County being obligated to issue certificates of occupancy for more than 48 residential units on the Property.

13. Severability. In the event that any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States, or if the application thereof to any owner of any portion of the Property or to any government agency is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or provision hereof.

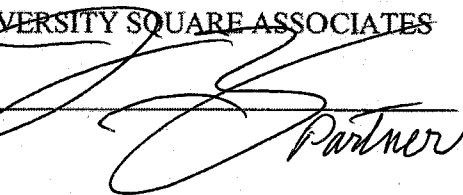
14. Successors and Assigns. These Proffers shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors and/or assigns.

WITNESS the following signature.

UNIVERSITY SQUARE ASSOCIATES

By:

Title:

  
Partner

STATE OF Virginia  
CITY/COUNTY OF Virginia Beach, to-wit:

The foregoing instrument was acknowledged before me this 15 day of October, 2014, by Frank R. Sadeer as Partner of UNIVERSITY SQUARE ASSOCIATES, a Virginia general partnership, on behalf of the partnership.

  
NOTARY PUBLIC

HEIDI MARIE MACEMORE  
NOTARY PUBLIC  
REGISTRATION # 7562623  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES  
APRIL 30, 2017

My commission expires: April 30, 2017  
Registration No.: 7562623

Schedule A

Property Description

Those certain parcels or lots of land located in James City County, Virginia shown and set out as (i) "New Parcel 25," "New Parcel 26," "New Parcel 27," "New Parcel 28," and "New Parcel 29" on the plat entitled "PLAT OF RESUBDIVISION AND LOT LINE EXTINGUISHMENT SHOWING NEW PARCELS 2, 24-29, WILLIAMSBURG CROSSING" made by AES Consulting Engineers dated November 2, 1999 which plat is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City in James City Plat Book 75 at page 92 and (ii) "Residual Parcel 20" on the plat entitled "RESUBDIVISION OF PARCEL 20, WILLIAMSBURG CROSSING" made by Langley and McDonald, P.C. and dated July 30, 1997, which plat is recorded in the aforesaid Clerk's Office in James City Plat Book 67 at page 37.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 6-2-2013  
at 8:51 AM/PM. The taxes imposed by Virginia Code  
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.  
STATE TAX LOCAL TAX ADDITIONAL TAX  
\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
TESTE: BETSY B. WOOLRIDGE, CLERK  
BY: Betsy B. Woolridge Clerk



OFFICIAL RECEIPT  
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT COURT  
5201 MONTICELLO AVE SUITE 6  
WILLIAMSBURG, VA 23188  
757-564-2242

DEED RECEIPT

DATE: 06/02/15 TIME: 08:51:39 ACCOUNT: 830CLR150010679 RECEIPT: 15000017864  
CASHIER: AES REG: WD19 TYPE: OTHER PAYMENT: FULL PAYMENT  
INSTRUMENT : 150010679 BOOK: PAGE: RECORDED: 06/02/15 AT 08:51  
GRANTOR: UNIVERSITY SQUARE ASSOCIATES EX: N LOC: CO  
GRANTEE: UNIVERSITY SQUARE ASSOCIATES EX: N PCT: 100%  
AND ADDRESS : N/A N/A, XX. 00000  
RECEIVED OF : UNIVERSITY SQUARE ASSOCIATES DATE OF DEED: 10/15/14  
: \$.00  
DESCRIPTION 1: SIX PARCELS JAMES CITY COUNTY PAGES: 0 OP: 0  
2: NAMES: 0  
CONSIDERATION: .00 A/VAL: .00 MAP:  
PIN:  
000 \*\* ZERO PAYMENT \*\* .00  
TENDERED : .00  
AMOUNT PAID: .00  
CHANGE AMT : .00

CLERK OF COURT: BETSY B. WOOLRIDGE

PAYOR'S COPY  
RECEIPT COPY 1 OF 2