

Parcel Nos: 4730100036, 4730100037, 4730100039

Prepared by:
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THIRD AMENDMENT TO PROFFERS

THIS THIRD AMENDMENT TO PROFFERS is made this 21st day of December, 2020 by JTR PROPERTIES LLC, a Virginia limited liability company (together with its successors and assigns, the "Owner"), to be indexed as "Grantor." JAMES CITY COUNTY, a political subdivision of the Commonwealth of Virginia (the "County"), to be indexed as "Grantee."

RECITALS

A. Owner is the owner of three contiguous tracts or parcels of land located in James City County, Virginia (the "Property"), now zoned R2 - General Residential, and subject to Proffers dated February 13, 2008, which Proffers are recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City as Instrument No. 080020381, as amended by First Amendment to Proffers dated November 28, 2017 recorded in the aforementioned Clerk's Office as Instrument No. 180002012 and further amended by Second Amendment to Proffers dated January 23, 2019 recorded in the aforementioned Clerk's Office as Instrument No. 190003588 (the "Existing Proffers"). The Property is more particularly described in the Existing Proffers.

B. Owner desires to amend certain Conditions of the Existing Proffers as set forth below. All capitalized terms used herein not otherwise defined shall have the definition set forth in the Existing Proffers.

AMENDMENTS TO CONDITIONS

1. Condition 2 (Owners Association) of the Existing Proffers is hereby amended to read in its entirety as follows:

“2. Owners Association.

(a) Prior to the first conveyance of any subdivided lot or condominium unit in the Property to an owner other than the owner at the time of subdivision or recording of the condominium declaration, there shall be organized an owner's association (the "Association") in accordance with Virginia law in which all lot or unit owners in the Property, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and declaration of restrictive covenants or declaration of condominium (together, the "Governing Documents") creating and governing the Association shall be submitted to and reviewed by the County Attorney for consistency with this Proffer. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of stormwater management BMPs, recreation areas, private roads and parking areas, shall require each initial purchaser of a lot or unit to make a capital contribution to the Association for reserves in an amount equal to one-sixth of the annual general assessment applicable to the lot or unit (but no less than \$100.00) and shall require that the Association (i) assess all members for the maintenance of all properties owned or maintained by the Association and (ii) file liens on members' lots or units for non-payment of such assessments. The Governing Documents shall grant the Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing Documents.

(b) During times prior to conveyance of any subdivided lot or condominium unit in the Property when the entire Property remains under common ownership, the Owner shall be responsible to fulfill any obligations otherwise imposed on the Association under these Proffers other than those related to administration of the Association which shall not apply until single ownership of the Property is severed. Commencing in the year in which a certificate of occupancy for any dwelling unit in the Property is issued and continuing until an Association is formed for the Property, Owner shall maintain and administer a maintenance, replacement and repair reserve fund for improvements at the Property including the Private Drives (as defined in Condition 8 below), stormwater management BMPs, recreation areas, and parking areas, and Owner shall contribute to such fund at least the sum of \$300.00 per dwelling unit per year. At such time as an Association is established, the Owner shall transfer the balance of said reserve fund to the Association to be used in its reserve fund as described above. The County shall be provided evidence of the reserve fund at least annually during such period prior to an Association

being formed. For a period of thirty years commencing in the year in which a certificate of occupancy for any dwelling unit in the Property is issued, the Owner shall cause the reserve fund to be administered in accordance with the IRS Section 42 Low-Income Housing Tax Credit (LIHTC) Affordable Housing Program ("LIHTC Program") or funding sources associated therewith applicable to the Property."

2. Condition 4 (Cash Contributions for Community Impacts) of the Existing Proffers

is hereby amended to read in its entirety as follows:

"4. Cash Contributions for Community Impacts. For each dwelling unit on the Property the one-time cash contribution set forth in this Section 4 shall be made.

(a) A contribution of \$300.00 for each dwelling unit on the Property shall be made to the County for off-site stream restoration in the Powhatan Creek watershed.

(b) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit on the Property after completion of the final inspection and prior to the time of issuance of a certificate of occupancy for such unit.

(c) The per unit contribution(s) paid pursuant to this Section 4 shall be adjusted annually beginning January 1, 2009 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Costs Index (the "Index"). In no event shall the per unit contribution be adjusted to a sum less than the amount set forth in paragraph (a) of this Section. The adjustment shall be made by multiplying the per unit contribution for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the Index, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the manner of computing the Index. 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 Director 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."

3. Condition 8 (Private Drives) of the Existing Proffers is hereby amended to read in its entirety as follows:

“8. Private Drives. All entrance and interior roads, driveways, lanes or drive aisles connecting the parking areas on the Property (collectively, the “Private Drives”) shall be private and shall be constructed in accordance with applicable County private street standards. The Private Drives shall be maintained by the Owner until such time as the Association is established, and thereafter by the Association. If, at the time an Association is established, the amount of the reserve fund to be transferred from the Owner to the Association pursuant to Condition 2 above is less than the amount equal to 150% of the maintenance fee that would be required for a public street of the same length as established by VDOT – Subdivision Street Requirements, the Owner shall contribute an additional amount to the Association for its reserves to make up such deficiency.”

4. Condition 13 (Green Building; Earthcraft House Certification) of the Existing Proffers is hereby amended to read in its entirety as follows:

“13. Green Building. The development will be designed to meet the criteria to achieve certification under the Energy Star Multifamily New Construction Program (“Energy Star”) and incorporate all items required to meet the baseline energy performance standards established by the Residential Energy Services Network (“RESNET”). A copy of the Energy Star certification, or documentation of design elements utilized to meet certification criteria, shall be provided to the Director of Planning for the applicable dwelling units prior to issuance of the certificates of occupancy for such units. Prior to issuance of final site plan approval, the Owner shall submit for approval to the Director of Planning the program specifications for both Energy Star certification and RESNET baseline energy performance standards applicable to the project as well as design and construction documents for the project incorporating elements to meet those specifications and standards. The validation process for Energy Star certifications and RESNET standards shall be overseen by an appropriate accredited professional and approved by the Director of Planning or his designee.”

5. Condition 15 (Nutrition Management Plan) of the Existing Proffers is hereby amended to read in its entirety as follows:

“15. Nutrient Management Plan. The Owner shall be responsible for contacting an agent of the Colonial Soil and Water Conservation District (“CSWCD”) or, if a CSWCD agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia, or other qualified professional to conduct soil tests and to develop, based

upon the results of the soil tests, customized nutrient management plans (the “Plans”) for all common areas within the Property. The Plans shall be submitted to the County’s Director of Stormwater & Resource Protection for review and approval prior to the issuance of the building permits for more than 50% of the units shown on the Master Plan. Upon approval, the Owner, until such time as the Association is established and thereafter the Association, shall be responsible for ensuring that any nutrients applied to the common areas be applied in strict accordance with the Plan. If the Property is subdivided, (a) the Owner shall provide the Plans applicable to any individual lot to the initial purchaser thereof, and (b) within twelve (12) months after establishment of the Association and every three years thereafter, the Association shall cause a turf management information seminar to be conducted at the Property which shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy turf and landscape plants. As used in this Section 15, the term “common areas” shall mean the landscaped portions of the Property.”

6. Condition 17 (Underground Storage Tanks) of the Existing Proffers is hereby amended to read in its entirety as follows:

“17. **Underground Storage Tanks.** Any existing underground storage tanks on the Property shall be removed in accordance with applicable laws, regulations and ordinances prior to the issuance of any building permit for structures on the Property. In the course of disturbing land and constructing improvements on the Property, Owner shall comply with (a) the requirements of the Virginia Department of Environmental Quality closing letter dated September 27, 2020 (FAC#5012852); and (b) the recommendations set forth in Section 6.0 of the Post Characterization Site Monitoring Report dated September 16, 2020 and prepared by Bay Environmental, Inc.”

7. Condition 19 (Price Restricted Units) of the Existing Proffers is hereby amended to read in its entirety as follows:

“19. **Price Restricted Units.** All units shall be reserved and offered for rent for a period of at least thirty years following issuance of a Certificate of Occupancy at a rental rate targeted to households at or below sixty percent (60%) of the Area Median Income (AMI) in compliance with the requirements (including but not limited to rent limits): (a) of the LIHTC Program; and (b) for 100% cash proffer reduction under the County’s Housing Opportunities Policy adopted November 27, 2012. Rental rates shall be reported to the Director of Planning annually during the thirty-year period.”

8. Except as specifically amended herein, the Existing Proffers remain unchanged and in full force and effect.

WITNESS the following signature and seal.

JTR PROPERTIES LLC

By: *Jennifer Lynn Wise* (SEAL)
Jennifer Lynn Wise, Executor of the
Estate of Sterling M. Nichols, Member

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF James City County, to-wit:

The foregoing instrument was acknowledged this 21st day of December, 2020,
by Jennifer Lynn Wise, Executor of the Estate of Sterling M. Nichols, Member of JTR Properties
LLC, on behalf of the company.

My commission expires: 4/30/2022
Melissa Marie Nelson
NOTARY PUBLIC



INSTRUMENT 210008965
RECORDED IN THE CLERK'S OFFICE OF
WMSBG/JAMES CITY CIRCUIT ON
MAY 3, 2021 AT 01:17 PM
MONA A. FOLEY, CLERK
RECORDED BY: SPA