

**FENTON MILL (GPINS: C20d-4780-1137, D19a-1381-3152,
D19b-2545-2534, D19b-2734-4736, D20c-1880-1425, D20c-1816-0933)
PLANNED DEVELOPMENT (PDR) PROFFERS**

THESE PROFFERS, made this ___ day of November, 2020, by and among: **FENTON MILL ASSOCIATES, LLC**, a Virginia limited liability company, (to be indexed as Grantor); and **THE COUNTY OF YORK, VIRGINIA** (“County”), a political subdivision of the Commonwealth of Virginia (to be indexed as Grantee).

RECITALS.

R-1. Fenton Mill Associates, LLC, is the owner (the “Owner”), of certain tracts or parcels of land located in York County, Virginia, consisting of Parcels: C20d-4780-1137, D19a-1381-3152, D19b-2545-2534, D19b-2734-4736, D20c-1880-1425, and D20c-1816-0933 totaling approximately three hundred seventy- six (376) acres.

R-2. The Owner has filed an application for rezoning of the Property (the "Application") and has consented to the Application in its current form, as evidenced by the duly authorized signature thereto. The Application has been designated by York County as Case No. PD-53-20.

R-4. In the Application, Owner requests that the Zoning Classification of the Property be changed from Zone LB and RR to Zone PDR with Proffers, as described in Section 24.1-361.1, et seq., of the York County Zoning Ordinance in effect on the date hereof, in order to permit the construction of a planned development residential community (the “Community”).

R-5. The Owner, in furtherance of its Application, desires to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided by the York County Zoning Ordinance for the protection and enhancement of the development of the Property in accordance with the provisions of Section 15.2-2296, et seq. of the Code of Virginia, 1950, as amended (hereinafter referred to as the “Virginia Code”) and Section 24.1-361 of the York County Zoning Ordinance.

R-6. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

R-7. All capitalized terms used herein, but not otherwise defined in these Proffers, shall have the meaning ascribed hereto in the Residential Design Guidelines.

Furthermore, for and in consideration of the Application approval by York County, and pursuant to the Virginia Code, and Section 24.1-361 of the York County Zoning Ordinance, the Owners hereby agree that, if the Application is approved, and the

York County Board of Supervisors allows the rezoning of the Property from “Limited Business and Rural Residential” to “Planned Development Residential” then any subsequent development of the Property shall be in conformance with the Proffers, herein.

PROFFERS:

1. Plan of Development – The Property shall be developed generally in accordance with the Fenton Mill Master Plan prepared by Land Planning Design Associates (LPDA) dated September 2020 (the “Master Plan”). The Master Plan is a conceptual plan for proposed development on the Property and provides only for the general location of buildings, proposed streets, sidewalks and pathways, parking, drainage facilities, landscaping, areas of open space, and buffer areas, and is subject to such approvals as may be necessary from any governmental body, quasi-governmental entity, and/or private utility entity. Nothing herein shall prohibit Developer from adjusting lot lines to allow for larger lot dimensions. Townhome lot sizes may be reduced to a minimum of 20’ in width provided that no more than 104 total townhome units will be constructed. Deviations from the Master Plan shall be allowed in accordance with the provisions of the Zoning Ordinance and the Virginia Code, specifically including Virginia Code Section 15.2-2302, as the same may be amended,

2. Property Owners Association(s) – If any individual dwelling unit on the Property is to be offered for sale separate from the rest, then one or more property owners’ associations and/or condominium unit owners associations shall be established pursuant to and in accordance with the Virginia Property Owners Association Act, Section 55.1-1800 et seq., of the Virginia Code or the Virginia Condominium Act, Section 55.1-1900 et seq., of the Virginia Code, as applicable (hereinafter, each association shall be referred to as an "Owners Association"), in which all owners of residential lots, units and parcels within the Property shall be members of at least one of such Owners Associations(s) by virtue of their property ownership. The Owners’ Association shall appoint an Architectural Review Committee (ARC) to review and approve all additions and/or changes to primary structures, construction of all secondary structures, and landscaping and fencing on each residential lot.

3. Residential Units – There shall be no more than 599 dwelling units constructed on the Property, of which no more than 104 may be attached units

5. Design Guidelines, setbacks, building materials – All dwelling units and, community amenities shall be constructed in general accordance with the Design Guidelines prepared by LPDA for Fenton Mill dated October, 2020. Elevations of primary structures to be constructed within the community shall be reviewed by the York County Planning Division for compliance with the Design Guidelines.

6. Recreation Facilities – Recreation facilities developed on the Property shall include the following items listed below. The specific sizing, location, and design of the recreational facilities described below shall be subject to such minor modifications as may be approved in writing by the County Zoning Administrator.

- a. Community clubhouse and poolhouse, with a combined size of at least 5,000 square feet as shown on the Master Plan, including a fitness room, kitchenette, and community activity room.
- b. Community swimming pool with a minimum of 4,000 square feet of water surface area.
- c. Landscaped 4.5-acre park along Newman Road generally as depicted in the Design Guidelines.
- d. A minimum of three (3) playgrounds as shown on the Master Plan.
- e. Dog park.
- f. Formal event lawn.
- g. Soccer field.
- d. Sidewalks, parks, trails, and amenity areas generally in accordance with the Master Plan.

Construction will begin on those recreational facilities noted above when road and utility construction is completed in front of each such facility.

7. Contribution for School Impacts – The developer shall dedicate an approximately 16-acre site along Fenton Mill Road generally as depicted on the Master Plan to the County of York for the construction of a school or other public use deemed appropriate by the County (“ Public Use Site”). Developer agrees to extend public water and sanitary sewer stubs to the School Site at the time development reaches that phase of the project. Such water and sewer stubs shall be of sufficient size and capacity to accommodate a public school or other designated public use on the School Site. In the event the County needs to build on the Public Use Site prior to the time development reaches that phase of the project and the County provides written notification to the Developer to that effect, Developer agrees to provide such water and sewer stubs to the Public Use Site within three (3) years of receiving such written notice from the County.

8. Contribution of Additional Land for Public Use – The developer shall dedicate an approximately 52-acre site generally as depicted on the Master Plan to the County of York for parks and recreation or other public use. The developer will not extend public utilities to this site.

9. The Applicant will cause to be constructed a public water connection to the adjacent Skimino Hills community at such time as the 7 lots at the end of Wichita Lane are developed, subject to York County and Newport News Waterworks plan approval.

10. Transitional Buffers – A minimum Type 50-foot Transitional Buffer shall be maintained along the Property’s boundary line with the adjacent Skimino Hills subdivision and the adjacent, undeveloped properties located at 200 Newman Road and 286 Newman Road.

11. Traffic Improvements – The developer shall construct those on-site and off-site roadway improvements recommended in the Traffic Impact Study by McPherson Consulting, dated, September, 2020, subject to approval of the Virginia Department of Transportation. The Developer shall also contribute One Hundred Thousand Dollars (\$100,000.00) to the County of York to be used toward the design of improvements to Fenton Mill Road, as agreed to between the County and the Virginia Department of Transportation. This contribution shall be made upon final development plan approval York County and VDOT of the first vehicular access onto Fenton Mill Road.

12. Successors and Assigns – These Proffers shall run with the title to the Property and shall be binding on the parties hereto and their respective successors and assigns; provided, however once a party ceases to own any portion of the Property, such party shall have no continuing liability hereunder.

13. Severability – In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged 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 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, subparagraph, section, subsection or provision 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, subparagraph, section, subsection or provision hereof.

14. Headings – All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not part of these Proffers.

15. Conflicts – In the event that there is any conflict between these Proffers and the Zoning Ordinance, the conflict shall be resolved by the County's Zoning Administrator subject to the appeal process to the Board of Zoning Appeals and the Courts as otherwise provided by law.

16. Void if Application not Approved – In the event that the Application is not approved by the County or is overturned by subsequent judicial determination, these Proffers and the Master Plan shall be null and void.

17. Incorporation of Recitals – The Recitals set forth above shall be included and read as part of these Proffers and are incorporated herein by reference.

WITNESS the following signature, thereunto duly authorized:

FENTON MILL ASSOCIATES, LLC

A Virginia limited liability company

By: _____

Print Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2020 by _____ as _____ of Fenton Mill Associates, LLC, a Virginia limited liability company.

NOTARY PUBLIC

My commission expires: _____

Registration No.: _____