

JUN 30 2016

TOWNE PARK CENTER PROFFERED CONDITIONS

Planning Division

THESE PROFFERS are made this _____ day of June, 2016 by and among **OLD POINT NATIONAL BANK OF PHOEBUS** ("Old Point") (to be indexed as grantor), **MARLYN DEVELOPMENT CORPORATION**, a Virginia corporation ("Marlyn") (to be indexed as grantor), and the **COUNTY OF YORK, VIRGINIA**, a political subdivision of the commonwealth of Virginia ("County") (to be indexed as grantee).

RECITALS

R-1. Old Point is the owner of certain real property (the "Property") located within the territorial confines of the County being a portion of that property located at 300ZZ and 300Z1 Bulifants Boulevard, Williamsburg, Virginia 23188, GPINs C19c-1938-0016 and C19c-2281-0202, Tax Parcel #s 002-19-9 and 002-19-10, more particularly described on **Exhibit A** attached hereto and made part hereof

R-2. Marlyn is the contract purchaser of the Property.

R-3. Old Point and Marlyn have filed an application (the "Application") requesting that the zoning of the Property be changed from EO – Economic Opportunity to PDR – Planned Development Residential with proffers as described in Section 24.1-361 of the County's zoning ordinance in effect on the date hereof (the "Zoning Ordinance") in order to permit the construction of a senior housing independent living multi-unit community with internal entrances. A conceptual plan of development (the "Master Plan") entitled "_____" dated _____, 2016, prepared by AES Consulting Engineers, has been submitted to the County Planning Division for review by the County in connection with the Application. The Master Plan is on file with the Office of the County Planning Division.

R-4. The provisions of the Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the Property. Accordingly, Smith and H&L, in furtherance of the Application, desire to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the Zoning Ordinance for the protection of the community 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 (the "Virginia Code") and the County Zoning Ordinance.

R-5. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the Virginia Code.

NOW, THEREFORE, for and in consideration of the approval by the County of the Application and pursuant to Section 15.2-2296, et seq., of the Virginia Code and the County Zoning Ordinance, Old Point and Marlyn (collectively, the "Applicant") hereby agree that if the Application is approved and the Board of Supervisors of the County rezones the Property from EO – Economic Opportunity to PDR – Planned Development Residential with proffers, then any subsequent development of the Property shall be in conformance with the following proffers:

PROFFERS:

1. Plan of Development. The Property shall be developed generally in accordance with 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, parking, public water access, drainage facilities, landscaping, areas of open space, and buffer areas. Any deviations from the Master Plan shall be allowed only in accordance with the provisions of the Zoning Ordinance.

2. Residential Units. There shall be no more than 145 dwelling units constructed on the Property.

3. Design. The homes on the Property shall be constructed generally in accordance with the architectural elevations entitled "_____", dated _____, prepared by _____ (the "Elevations"), a copy of which Elevations are on file in the Office of the County Planning Division. The Elevations may be modified from time to time provided that such modifications do not alter the basic character and intent of the Elevations and provided that such amendments are approved by the Director of Planning for consistency with the terms of this proffer.

4. Age Restriction. Occupancy of the dwelling units developed upon the Property shall be age restricted to either persons fifty-five (55) or sixty-two (62) years of age or older (the "Qualifying Age") in accordance with the following parameters:

(a) It is the intent of the parties that Residential Units shall be occupied by persons of the Qualifying Age or older and that no Residential Unit shall be occupied by a person under the age of eighteen (18). In some instances, persons under the Qualifying Age but over the age of eighteen (18) shall be entitled to occupy Residential Units, subject, at all times, to the laws and regulations governing Qualifying Age restricted housing as more particularly set forth and described in subparagraph (b) below.

(b) Each Residential Unit shall be constructed and operated in compliance with applicable federal and state laws and regulations regarding housing intended for occupancy by persons of Qualify Age or older, including but not limited to: the Fair Housing Act, 42 U.S.C. §3601 *et seq.* and the exemption therefrom provided by 42 U.S.C. §3607(b)(2)(C) regarding discrimination based on familial status; the Housing for Older Persons Act of 1995, 46 U.S.C. §3601 *et seq.*; the Virginia Fair Housing Law Va. Code §36-96.1 *et seq.*; any regulations adopted pursuant to the foregoing; any judicial decisions arising thereunder; any exemptions and/or qualifications thereunder; and any amendments to the foregoing as now or may hereafter exist.

5. 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.

6. 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.

7. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not part of these Proffers.
8. 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.
9. 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.
10. Incorporation of Recitals. The Recitals set forth above shall be included and read as part of these Proffers and are incorporated herein by reference.

[SIGNATURES LOCATED ON FOLLOWING PAGES]

[SIGNATURE PAGE TO SMITH PROPERTY PROFFERS]

WITNESS the following signatures, thereunto duly authorized:

OWNER:

OLD POINT NATIONAL BANK OF PHOEBUS

By: _____

Print Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by
_____ as _____ of Old Point National Bank of
Phoebus.

NOTARY PUBLIC

My commission expires: _____
Registration No.: _____

[SIGNATURE PAGE TO SMITH PROPERTY PROFFERS]

APPLICANT:

MARLYN DEVELOPMENT CORPORATION, a Virginia corporation

By: _____

Print Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____ as _____ of Marlyn Development Corporation, a Virginia corporation.

NOTARY PUBLIC

My commission expires: _____

Registration No.: _____

EXHIBIT A

[Insert metes and bounds description and boundary exhibit]