

Prepared By:	Return To:

**JCC Tax Map Parcel Nos.** 3220100081  
3221500001A, 3221500002A,  
3220500012, 3220500009,  
3220500001, 3220100116,  
and 3220500014

## FOREST HEIGHTS AREA PROFFERS

THESE PROFFERS are made this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (together with its successors and assigns, the “County”), and THE SALVATION ARMY, a Georgia Corporation (together with its successors and assigns, the “Salvation Army” and together with the County, the “Owners”).

## RECITALS

- A. On December 13, 2011, the Board of Supervisors of James City County (“the “Board”), adopted an Ordinance rezoning approximately 47.1 acres in the Forest Heights redevelopment area, shown on the “Master Plan for Rezoning for Forest Heights Road/Neighbors Drive/Richmond Road Areas” (the “Master Plan”), from R-2, General Residential to MU, Mixed Use, with proffers.
- B. The proffers adopted as part of the Board’s 2011 rezoning were dated October 20, 2011 and recorded on April 26, 2012 as Instrument No. 120008937 in the Clerk’s Office for the Williamsburg-James City County Circuit Court (the “Existing Proffers”).
- C. On August 13, 2019, the Board initiated the rezoning of the same area from MU, Mixed Use to R-3, Residential Redevelopment.
- D. The Salvation Army owns an ±11.42 acre parcel located at 6015 Richmond Road, further identified as JCC Real Estate Tax Map No. 3220100081 (the “Salvation Army

Property”), which property is more particularly described in Exhibit A.

- E. The County owns property located at 100 Forest Heights Road, 506 Benefit Lane, 115 Neighbors Drive, 127 Neighbors Drive, 134 Neighbors Drive, 140 Neighbors Drive, and 5951 Richmond Road, further identified as CC Real Estate Tax Map Nos. 3221500001A, 3221500002A, 3220500012, 3220500009, 3220500001, 3220100116, and 3220500014, respectively (the “County-owned Property”), which property is more particularly described in Exhibit B.
- F. The Salvation Army and the County desire to supplement the regulations of the zoning ordinance and restate the Existing Proffers as more particularly set forth below.

NOW, THEREFORE, in consideration of the approval of the requested rezoning and pursuant to Sections 15.2-2303 and 15.2-2303.4(D) of the *Code of Virginia*, 1950, as amended, Ordinance No. 31A-346 adopted by the Board of Supervisors on October 8, 2019, and Section 24-16 the County Zoning Ordinance, the County and the Salvation Army agree that they shall meet and comply with the applicable following conditions:

**PART A.** The following, Part A proffers shall apply only to the County-owned Property:

A.1. Water Conservation/Sustainable Building. Water conservation measures will be implemented to reduce the water usage in the home and to heat that water more efficiently. Such water conservation measures shall apply to County-owned lots and to rehabilitations on the County-owned Property and include: conducting water leakage tests to ensure there are no bulk water leaks inside of the structure, replacement of old toilets and old showerheads in pre-existing bathrooms with new fixtures that meet the National Energy Policy Act standards for low flow, installation of high efficiency water heaters that meet Energy Star standards, and

insulation of the first few feet of hot and cold water lines to reduce conductive losses and wasted water.

A.2. Owners Association. The County shall establish an owners' association (the "Association") in accordance with Virginia law, which all current property owners on Forest Heights Road and Neighbors Drive may voluntarily join, and all purchasers of County-owned Property shall be required to join. The articles of incorporation, bylaws, and restrictive covenants (together, the "Governing Documents") creating and governing the Association shall be submitted to and approved by the County Attorney prior to issuance of any building permit for a County-owned or developed lot. The Governing Documents shall require that the Association adopt an annual maintenance budget, which shall include a reserve for maintenance of dedicated open space and common areas. The Declaration of Covenants and Restrictions as Instrument Number 120004713 in the Clerk's Office for the Williamsburg-James City County Circuit Court.

**PART B.** The following, Part B, proffers shall apply to the Salvation Army Property only:

B.1. Master Plan. The Salvation Army Property shall be developed generally as shown on the Amended Master Plan. Development plans may deviate from the Amended Master Plan as provided in Section 24-23 of the Zoning Ordinance. There shall be no more than 46 single-family attached dwelling units ("townhouse units") and no more than 50 apartment dwelling units ("apartments") on the Salvation Army Property.

B.2. Housing Opportunities.

(a) All of the townhouse units permitted on the Salvation Army Property shall be offered for sale or made available for rent at prices determined in accordance with the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of

Supervisors on November 27, 2012 (“HOP”). In no event shall the maximum initial sale price of a townhouse unit exceed \$275,000.00 subject to escalation in accordance with paragraph (b) of this Section (the “Maximum Sale Price”). All apartments shall be offered at rents targeted to households earning 30% to 60% of Area Median Income. The forgoing affordable/workforce dwelling units shall be provided consistent with the criteria established by the HOP.

(b) The Maximum Sale Price shall consist of the \$275,000.00 plus any adjustments included in the Marshall and Swift Building Costs Index, Section 98, Comparative Cost Multipliers, Regional City Averages (the “Index”) from 2019 to the year a sale is made if sales are made on or after January 1, 2020. The Maximum Sale Price shall be adjusted once a year with the January supplement of the Index of the payment year. In no event shall the Maximum Sale Price be adjusted to a sum less than \$275,000.00. 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 Maximum Sale Price to approximate the rate of annual inflation in the County.

B.3. Age Restriction. All apartments shall be age restricted to persons fifty-five (55) years of age or older in accordance with the following parameters:

(a) It is the intent of the parties that apartments shall be occupied by persons fifty-five (55) years of age or older and that no apartment shall be occupied by a person under the age of eighteen (18). In some instances, persons under the age of fifty-five (55) but over the age of eighteen (18) shall be entitled to occupy an apartment, subject, at all times, to the laws and regulations governing age fifty-five (55) and over restricted housing as more particularly set forth and described in subparagraph (ii) below.

(b) The apartments shall be developed and operated in compliance with applicable federal and state laws and regulations regarding housing intended for occupancy by persons fifty five (55) years of 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.

**B.4. Cash Contributions.**

(a) A one-time contribution shall be made to the County of \$6,051.31 for each townhouse unit constructed on the Salvation Army Property, subject to paragraph (d) below. Such contributions shall be used by the County for school uses.

(b) A one-time contribution shall be made to the County of \$67.92 for each dwelling unit constructed on the Salvation Army Property, subject to paragraph (d) below. Such contributions shall be used by the County for recreational uses.

(c) A one-time contribution shall be made to the James City Service Authority of \$1,113.00 for each dwelling unit constructed on the Salvation Army Property, subject to paragraph (d) below. Such contributions shall be used by the County for water or wastewater system uses.

(d) The cash contributions proffered in paragraphs (a), (b) and (c) above shall be reduced in accordance with Section 3 of the HOP.

(e) 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.

(f) The per unit contribution amounts shall consist of the amounts set forth in paragraphs (a) through (c) plus any adjustments included in the Marshall and Swift Building Costs Index, Section 98, Comparative Cost Multipliers, Regional City Averages (the “Index”) from 2019 to the year a payment is made if payments are made after on or after January 1, 2020, subject to reduction as provided in paragraph (d). 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 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.

B.5. Recreation. The 0.18 mile of multi-use path, the 2,500 square foot playground and the 0.37 acre pocket park shown on the Master Plan shall be installed prior to the County being obligated to issue more than 23 building permits for dwelling units on the Salvation Army Property.

B.6. Design Guidelines and Elevations. All building plans and building elevations shall be generally consistent with the Guidelines and Elevations. Prior to the issuance of final site plan approval for each building on the Salvation Army Property, architectural plans for such buildings shall be submitted to the Director of Planning for his review for general consistency

with the Guidelines and Elevations. The Director of Planning shall review and either approve or provide written comments setting forth changes necessary to obtain approval within 30 days of the date of submission of the plans in question. If the Director of Planning refuses to approve architectural plans, such refusal may be appealed to the Development Review Committee whose decision shall be final. 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.

B.7. Townhouse Owners Association. There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all townhouse unit owners in the Salvation Army Property, by virtue of their property ownership, shall be members.

B.8. Prohibited Uses. The following uses, otherwise permitted by right in the R-3 district, shall not be permitted on the Salvation Army Property:

- a) Coin laundries which are accessory to other residential uses and for the primary use of its residents.
- b) Hospitals and mental health facilities.
- c) Water impoundments, new or expansion of, less than 50 acres and with dam heights of less than 25 feet.
- d) Water impoundments, new or expansion of, 50 acres or more and dam heights of 25 feet or more.
- e) Communications facilities (public or private), including, but not limited to, antennas, towers, and support structures, that utilize alternative mounting structures. All facilities shall comply with article II, division 6 of this chapter.
- f) Communications facilities (public or private), including, but not limited to, antennas, towers, and support structures, that are camouflaged; or multi-antenna systems. All facilities shall comply with article II, division 6 of this chapter.
- g) Electrical generation facilities, public or private, electrical substations with a capacity of 5,000 kilovolt amperes or more and electrical transmission lines capable of transmitting 69 kilovolts or more.
- h) Railroad facilities including tracks, bridges and stations. However, spur lines which are to serve and are accessory to existing or proposed development adjacent to existing railroad rights-of-way and track and safety improvements in existing railroad rights-of-way are permitted generally and shall not require a special use permit.
- i) Telephone exchanges and telephone switching stations.

- j) Transmission pipelines (public or private), including pumping stations and accessory storage, for natural gas, propane gas, petroleum products, chemicals, slurry coal and any other gases, liquids or solids. However, extensions for private connections to existing pipelines, which are intended to serve an individual residential or commercial customer and which are accessory to existing or proposed development, are permitted generally and shall not require a special use permit.
- k) Water facilities (public or private), and sewer facilities (public), including, but not limited to, treatment plants, pumping stations, storage facilities and transmission mains, wells and associated equipment such as pumps to be owned and operated by political jurisdictions.
- l) Timbering in accordance with section 24-43.

**PART C.** The following proffers shall apply to both the County-owned Property and the Salvation Army Property:

C.1. Shared maintenance agreement for the stormwater facilities. Owners agree to develop and execute a Shared Maintenance Agreement (the “Agreement”) prior to issuance of any building permit on the Salvation Army Property. The Agreement shall provide for routine and non-routine maintenance of the stormwater basin to be located on the property currently known as 506 Benefit Lane.

C.2. Water Conservation. Owners shall be responsible for developing and implementing water conservation standards which shall be submitted to and approved by the James City Service Authority prior to any final development plan approval(s). The standards shall address such water conservation measures as prohibitions on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.

WITNESS the following signatures:

THE COUNTY OF JAMES CITY, VIRGINIA

BY: \_\_\_\_\_  
Scott A. Stevens, County Administrator

COMMONWEALTH OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing Proffers were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by Scott A. Stevens

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
County Attorney

THE SALVATION ARMY

BY: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_, to wit:

The foregoing Proffers were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

## EXHIBIT A

### **6015 Richmond Road, Parcel Identification Number 3220100081**

ALL that certain lot, piece, or parcel of land situate, lying and being in Powhatan District (formerly Berkeley District), James City County, Virginia, known and designated as Lots “E” and “F” as shown on that certain plat entitled, ‘PLAT OF: LOTS: “E” & “F”, D. WARREN MARSTON’S PROPERTY SUBDIVISION PROPERTY OF PETER EPPS,” made by Stephen Stephens, CLS, dated January, 1973, a copy of which is recorded in James City County Deed Book 142, page 133.

LESS AND EXCEPT that lot, piece or parcel of land known and designated as “AREA CONVEYED TO JAMES CITY COUNTY FROM SALVATION ARMY, 36,608 S.F., 0.840 AC.” As shown on that certain plat entitled, “PLAT OF BOUNDARY LINE EXTINGUISHMENT, ADJUSTMENT AND SUBDIVISION OF LOTS 10 – 19, 21 – 33, 6015 RICHMOND ROAD AND RIGHT-OR-WAY DEDICATION, PHASE 2 OF FOREST HEIGHTS NEIGHBORHOOD. PREPARED FOR: JAMES CITY COUNTY HOUSING & COMMUNITY DEVELOPMENT, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA,” made by AES Consulting Engineers, Williamsburg, Virginia, dated July 31, 2014 and recorded in the Circuit Court Clerk’s Office for the City of Williamsburg and County of James City, Virginia as Instrument Number 160003088.

AND THAT certain lot, piece or parcel of land known and designated as “REMAINDER 2 (REM 2) AREA CONVEYED TO SALVATION ARMY FROM JAMES CITY COUNTY, 16,862 S.F., 0.387 AC.” As shown on that certain plat entitled, “PLAT OF BOUNDARY LINE EXTINGUISHMENT, ADJUSTMENT AND SUBDIVISION OF LOTS 10 – 19, 21 – 33, 6015 RICHMOND ROAD AND RIGHT-OR-WAY DEDICATION, PHASE 2 OF FOREST HEIGHTS NEIGHBORHOOD. PREPARED FOR: JAMES CITY COUNTY HOUSING & COMMUNITY DEVELOPMENT, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA,” made by AES Consulting Engineers, Williamsburg, Virginia, dated July 31, 2014 and recorded in the Circuit Court Clerk’s Office for the City of Williamsburg and County of James City, Virginia as Instrument Number 160003088.

## EXHIBIT B

### **100 Forest Heights Road, Real Estate Tax Number 3221500001A**

ALL THAT CERTAIN lot, piece or parcel of land, situate, lying and being in the County of James City, Virginia, shown and designated as “**CA-1**, 26,440 S.F. 0.607 AC.” on that certain plat entitled, “PLAT OF BOUNDARY LINE EXTINGUISHMENT AND SUBDIVISION, LOTS 3 - 9 AND RIGHT-OF-WAY DEDICATION FOR PHASE 1 OF FOREST HEIGHTS NEIGHBORHOOD, PREPARED FOR: JAMES CITY COUNTY HOUSING & COMMUNITY DEVELOPMENT, POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA,” made by AES Consulting Engineers, Williamsburg, Virginia dated May 15, 2014, and recorded in the Office of the Clerk of the Circuit Court of the City of Williamsburg and County of James City, Virginia, as Instrument Number 140013117.

IT BEING a portion of the property conveyed to the County of James City, Virginia, by deed from EJK Properties, LLC dated November 22, 2010 and duly recorded in the Office of the Clerk of the Circuit Court of the City of Williamsburg and the County of James City, Virginia, as Instrument Number 100025393; and a portion of the property conveyed to the County of James City, Virginia, by deed from Dianne Clark Mitchell, et als., dated January 30, 2011 and duly recorded in the Office of the Clerk of the Circuit Court of the City of Williamsburg and the County of James City, Virginia, as Instrument Number 1110003718.

### **506 Benefit Lane, Real Estate Tax Number 3221500002A**

ALL THOSE CERTAIN lots, pieces or parcels of land, situate, lying and being in the County of James City, Virginia, shown and designated as “OPEN SPACE 2 96,921 S.F. 2.225 AC.” on that certain plat entitled, “PLAT OF BOUNDARY LINE EXTINGUISHMENT, ADJUSTMENT AND SUBDIVISION OF LOTS 10 - 19, 21 - 33, 6015 RICHMOND ROAD AND RIGHT-OF-WAY DEDICATION PHASE 2 OF FOREST HEIGHTS NEIGHBORHOOD PREPARED FOR: JAMES CITY COUNTY HOUSING & COMMUNITY DEVELOPMENT POWHATAN DISTRICT JAMES CITY COUNTY VIRGINIA,” dated July 31, 2014, made by AES Consulting Engineers, Williamsburg, Virginia, and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia on February 19, 2016 as Instrument No. 160003088.

BEING portions of the same property conveyed to the County of James City, Virginia, by deed from EJK Properties, LLC dated November 22, 2010 and duly recorded in the Office of the Clerk of the Circuit Court of the City of Williamsburg and the County of James City, Virginia, as Instrument Number 100025393.

**115 Neighbors Drive, Real Estate Tax Number 3220500012**

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in Powhatan District, James City County, Virginia, shown and designated as “**LOT 12**, 8,967 S.F. 0.206 AC.,” on that certain plat entitled, “PLAT OF SUBDIVISION SHOWING LOTS 1, 8, 9, 12, 13, 14 & NATURAL OPEN SPACE, JAMES CITY COUNTY, VIRGINIA”, made by Michael Surveying & Mapping, P.C., dated October 30, 2015 and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia as Instrument Number 160000079.

IT BEING a portion of the same property conveyed to the County of James City, Virginia by deed from Torsion, Inc. dated February 28, 2010 and recorded in the aforesaid Clerk’s Office as Instrument Number 100005533 and by deed from Alma K Rogers dated August 7, 2014 and recorded in the aforesaid Clerks Office as Instrument Number 140015480.

**127 Neighbors Drive, Real Estate Tax Number 3220500009**

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in Powhatan District, James City County, Virginia, shown and designated as “**LOT 9**, 6,293 S.F. 0.144 AC.,” on that certain plat entitled, “PLAT OF SUBDIVISION SHOWING LOTS 1, 8, 9, 12, 13, 14 & NATURAL OPEN SPACE, JAMES CITY COUNTY, VIRGINIA”, made by Michael Surveying & Mapping, P.C., dated October 30, 2015 and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia as Instrument Number 160000079.

IT BEING a portion of the same property conveyed to the County of James City, Virginia by deed from Torsion, Inc. dated February 28, 2010 in the aforesaid Clerk’s Office as Instrument Number 100005533 and by deed from Robert James and Gladine James, dated April 21, 2011 and recorded in the aforesaid Clerk’s Office as Instrument Number 110010257.

**134 Neighbors Drive, Real Estate Tax Number 3220500001**

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in Powhatan District, James City County, Virginia, shown and designated as “**LOT 1**, 5,168 S.F. 0.119 AC.,” on that certain plat entitled, “PLAT OF SUBDIVISION SHOWING LOTS 1, 8, 9, 12, 13, 14 & NATURAL OPEN SPACE, JAMES CITY COUNTY, VIRGINIA”, made by Michael Surveying & Mapping, P.C., dated October 30, 2015 and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia as Instrument Number 160000079.

IT BEING a portion of the same property conveyed to the County of James City, Virginia by deed from J. Everett Johnson dated March 2, 2010 and recorded in the aforesaid Clerk’s Office as Instrument Number 100004286.

**140 Neighbors Drive, Real Estate Tax Number 3220100116**

All those certain lots, pieces or parcels of land, with the buildings and improvements thereon, lying, situate and being in Powhatan District, James City County, Virginia, shown and designated as “**OPEN SPACE CONSERVATION PARCEL**, 269,367 S.F. – 6.184 AC.,” on that certain plat entitled, “**PLAT OF SUBDIVISION SHOWING LOTS 1, 8, 9, 12, 13, 14 & NATURAL OPEN SPACE, JAMES CITY COUNTY, VIRGINIA**”, made by Michael Surveying & Mapping, P.C., dated October 30, 2015 and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia as Instrument Number 160000079.

BEING portions of the same properties conveyed to the County of James City, Virginia by deeds from:

1. Levi Wallace, Jr. and Levi Z. Wallace, III dated December 27, 2012 in the aforesaid Clerk’s Office as Instrument Number 120026513,
2. Torsion, Inc. dated February 28, 2010 in the aforesaid Clerk’s Office as Instrument Number 100005533,
3. deed from Martha Lee Maurice Smith, dated June 10, 2015 in the aforesaid Clerk’s Office as Instrument Number 15001172333

**5951 Richmond Road, Real Estate Tax Number 3220100116**

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, lying, situate and being in Powhatan District, James City County, Virginia, shown and designated as “**LOT 14**, 17,633 S.F. 0.405 AC.” on that certain plat entitled, “**PLAT OF SUBDIVISION SHOWING LOTS 1, 8, 9, 12, 13, 14 & NATURAL OPEN SPACE, JAMES CITY COUNTY, VIRGINIA**”, made by Michael Surveying & Mapping, P.C., dated October 30, 2015 and recorded in the Clerk’s Office of the Circuit Court of the City of Williamsburg and County of James City, Virginia as Instrument Number 160000079.

IT BEING a portion of the same property conveyed to the County of James City, Virginia by deed from Torsion, Inc. dated February 28, 2010 in the aforesaid Clerk’s Office as Instrument Number 100005533.