

JCC TAX ID NOS: # 2310100002  
CONSIDERATION: \$1.00

THIS DEED IS EXEMPT FROM TAXATION UNDER VIRGINIA CODE  
§§ 58.1-811 (A)(3)

### DEED OF EASEMENT

THIS DEED OF EASEMENT ("Deed") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between LISA JOY P. MARSTON, Trustee of the LISA JOY P. MARSTON REVOCABLE TRUST DATED September 13, 2010 (the "Grantor") and the COUNTY OF JAMES CITY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, (the "County" or the "Grantee" and, together with the Grantor, the "Parties").

### WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of a parcel of property located at 7581 Richmond Road in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number 2310100002 as more particularly described in Exhibit A attached hereto (the "Property");

WHEREAS, the Grantor desires to ensure that development of the Property, under certain conditions, be limited to affordable housing and accessory uses as more particularly described herein and have the Property be subject to the terms, limitations, and obligations of this Deed;

WHEREAS, Grantor desires density bonuses for development of the Property, which must be secured by a document approved by the county attorney.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, the covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants, and agrees as follows:

1. GRANT AND CONVEYANCE OF EASEMENT. The Grantor hereby grants and conveys to the Grantee a perpetual easement, in gross, (the "Easement") prohibiting development of the property for any use more intense than would be permitted under the County's General Agricultural, A-1, zoning district, unless:

(a) Such development is in accordance with the Virginia Housing and Development Authority's Low Income Housing Tax Credit Program, or a comparable or successor governmental program, or such other affordable housing regime as the County's Director of Planning may approve (the "Use");

(b) The buildings constructed on the Property are designed and constructed substantially consistent, subject to only minor changes, with the architectural elevations entitled “Proposed Oakland Pointe Apartments,” dated October 18, 2017, prepared by Parks-Player Architecture & Planning, LLC, a copy of which is on file with the County’s Director of Planning. Prior to site plan approval for the Use, final building elevations for the Use shall be submitted to the County’s Director of Planning for review and approval for consistency with this Section 1(b);

(c) The owner of the Property achieves EarthCraft/Viridiant gold certification, or equivalent certification as determined by the County’s Director of Planning for all buildings to be constructed on the Property, as shown on the master plan titled “Master Plan for Oakland Pointe,” prepared by AES Consulting Engineers and dated October 25, 2017, last revised September 26, 2018 (the “Master Plan”), a copy of which is on file with the County’s Director of Planning. Proof of EarthCraft/Viridiant gold certification, or equivalent certification, shall be provided to the County’s Director of Planning within one month of issuance of a Certificate of Occupancy for the Use or such other time as is agreed to in writing in advance by the County’s Director of Planning;

(d) The owner of the Property develops water conservation standards to be submitted to and approved by the James City Service Authority prior to final site plan approval, and subsequently enforces these standards. The standards shall address such water conservation measures as limitations on the installation and use of approved landscaping design and materials to promote water conservation and minimize the use of public water resources;

(e) Any offsite traffic improvements specified in a final Traffic Impact Study for the Use, approved by the County’s Director of Planning and the Virginia Department of Transportation, are installed or, in the discretion of the County’s Director of Planning, guaranteed in accordance with Section 19-74 of the James City County Code, prior to issuance of a Certificate of Occupancy for the Use. A copy of the final Traffic Impact Study shall be on file with the County’s Director of Planning;

(f) Prior to issuance of a Certificate of Occupancy for the Use, the owner (i) constructs and agrees to maintain in good order and repair a five foot wide concrete sidewalk upon that certain property located adjacent to the Property and commonly known as 7575 Richmond Road in James City County, Virginia and further identified as James City County Real Estate Tax Parcel Number 2321100001B (the “Adjacent Parcel”) as shown generally on the Master Plan, and (ii) obtains an easement from the owner of the Adjacent Parcel for pedestrian travel over and upon such sidewalk; and

(g) The owner of the Property works with an agent of the Virginia Cooperative Extension Office (“VCEO”) or, if a VCEO agent is unavailable, a soil scientist licensed in the Commonwealth of Virginia or other qualified professional approved by the County’s Director of Planning, to conduct soil tests and to develop, based upon the results of the soil tests, a customized nutrient management plan (“Nutrient Management Plan”) for all turf areas of the Property. The Nutrient Management Plan shall be submitted to the County Stormwater & Resource Protection Director for review and approval prior to the issuance of a Certificate of Occupancy for the Use. Upon approval, the owner of the Property shall be responsible for ensuring that any nutrients

applied to the turf areas on the Property be applied in accordance with the applicable Nutrient Management Plan or any updates or amendments thereto as may be approved by the County Stormwater & Resource Protection Director.

2. MISCELLANEOUS PROVISIONS.

(a) *No public right-of-access to Property.* This Deed does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof.

(b) *Continuation.* The covenants, terms, conditions, servitudes, and restrictions of this Deed shall apply to the Property as a whole, and shall run with the land perpetually and be binding upon the parties, their successors, assigns, personal representatives, and heirs, and be considered a servitude running with the land in perpetuity. Notwithstanding any provision of this Deed and any current or subsequent zoning classification of the Property, the Grantee shall, upon written request of the Grantor, initiate the process necessary to terminate the Easement if the following conditions exist: upon the last day of the sixth (6) month following the date of this Deed, the Property may only be developed in accordance with density limitations and restrictions at least as restricted as the criteria and restrictions applicable to the James City County Zoning Ordinance A-1 zoning classification then-in-effect,. Upon termination, a document evidencing said termination shall be recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia.

(c) *Action at law inadequate remedy.* The Parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions, and restrictions herein contained and, therefore, in the event that the Grantor, their successors or assigns, violate or breach any of the terms, conditions, and restrictions herein contained, the Grantee, in addition to all other remedies available at law and in equity, may institute a suit, and shall be entitled to enjoin such violation by *ex parte* temporary injunction and/or permanent injunction.

(d) *Failure to enforce does not waive right to enforce.* The failure of the Grantee to enforce any right, provision, covenant, restriction, term, or condition of this Deed shall not constitute a waiver of the right of the Grantee to enforce such right, provision, covenant, restriction, term, or condition in the future. All rights, remedies, and privileges granted to the Grantee pursuant to any term, provision, covenant, restriction, or condition of this Deed shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the Grantee from exercising such other privileges as may be granted by this Deed, at law, or in equity. Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.

(e) *No right of enforcement by the public.* This Deed does not create, and shall not be construed to create, any right of any member of the public exclusive of the County itself to maintain a suit, for any damages, against the Grantor for any violation of this Deed. This Deed does not

intend any third party beneficiary and there shall be no right for any third party to enforce any of the terms hereof.

(f) *Severability.* If any provision of this Deed is determined to be invalid by a court of competent jurisdiction, the remainder of this Deed shall not be affected thereby.

(g) *Recordation.* Upon execution by the Parties, this Deed shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia.

(h) *Authority to convey easement.* The Grantor covenants that it is vested with good title to the Property and enter into this Deed.

(i) *No Assignment.* Neither Grantee nor its successors may assign or transfer the Easement established and conveyed hereby.

(j) *Controlling law.* The interpretation and performance of this Deed shall be governed by the laws of the Commonwealth of Virginia. The proper venue for any legal proceeding regarding this Deed shall be in the circuit court for the City of Williamsburg and County of James City, Virginia.

(k) *Entire agreement.* This instrument sets forth the entire agreement of the Parties with respect to this Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Deed, all of which are merged herein.

(l) *Amendments.* This Deed may be amended only with the written consent of the Grantee and the, then-owner of the Property, and such amendment shall be duly recorded. Any amendment shall be at the sole discretion of the Grantee.

***(Remainder of page left blank. Signature pages to follow)***

[Signature Page to Deed of Easement]

WITNESS the following signature and seal:

\_\_\_\_\_  
LISA JOY P. MARSTON, Trustee of the  
LISA JOY P. MARSTON REVOCABLE TRUST DATED September 13, 2010

COMMONWEALTH OF VIRGINIA

City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was signed, sworn to and acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2018, by LISA JOY P. MARSTON, Trustee of the LISA JOY P. MARSTON  
REVOCABLE TRUST DATED September 13, 2010, Grantor.

WITNESS my signature and notarial seal.

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

Registration # \_\_\_\_\_

Expiration Date \_\_\_\_\_

[Signature Page to Deed of Easement]

GRANTEE: THE COUNTY OF JAMES CITY, VIRGINIA

Acceptance of this Deed of Easement is approved and, pursuant to a Resolution of the Board of Supervisors of James City County, Virginia, duly adopted on the 14<sup>th</sup> day of July 2015, this conveyance is hereby accepted on behalf of Grantee.

\_\_\_\_\_  
By:  
Title: County Administrator

STATE/Commonwealth of \_\_\_\_\_  
City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_ as County Administrator of James City County, Virginia.

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

My commission expires: \_\_\_\_\_  
Notary Registration No. \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
COUNTY ATTORNEY

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

All that certain lot, piece or parcel of land containing 14.54 acres, set out and shown as Parcel B of Oakland Farm on a plat entitled "A SURVEY FOR CONVEYANCE TO SOUTHPOINT PROPERTIES 326.89 AC +/-, PARCEL A, LYING IN POWHATAN DISTRICT, JAMES CITY COUNTY, VIRGINIA", dated December 21, 1973, made by L.V. Woodson & Associates, Inc. Engineers, Surveyors and Planners, recorded in James City County Plat Book 32, page 2 on March 28, 1974 and to which plat reference is here made for a more complete description.