

PROFFER AMENDMENT

THIS PROFFER AMENDMENT is made this 24th day of February, 2005, by RML III Corporation (together with its successors and assigns, the "Owner") and Jay Epstein (Developer), and PROFFERS dated July 31, 2003, which were accepted and approved as Agenda Item No. H-3 Rezoning Z-3-03 Pocahontas Square, by James City County Board of Supervisors on August 12, 2003. The existing proffers recorded in the James City County Clerk's office on August 21, 2003, as instrument #030024660 (Attached as Exhibit "A") remain in effect, except as amended by the following:

RECITALS

. WHEREAS, Owner is the record title owner of three contiguous tracts or parcels of land located in James City County, Virginia, one with an address of 8814 Pocahontas Trail, Williamsburg, Virginia, and being Tax Parcel 5920100004, the second with an address of 8838 Pocahontas Trail, Williamsburg, Virginia, and being Tax Parcel 5920100005A, and the third with an address of 8844 Pocahontas Trail, Williamsburg, Virginia, and being Tax Parcel 5920100005 (together, the "Property").

. WHEREAS, Jay Epstein, and/or assigns (Developer), has contracted to purchase the property conditioned upon rezoning and Proffer Amendment.

WHEREAS, the property is currently subject to Proffers made the 31st day of July, 2003, by Rose Marie Hall and RML III Corporation (See Exhibit "A" attached).

WHEREAS, the Owner and Developer desire to offer to the County certain amended conditions on the development of the property, not generally under current zoning.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

AMENDED CONDITIONS

1. Master Plan. The Property shall be subdivided and developed generally as shown on the revised Master Plan dated January 30, 2005, with only minor changes thereto that the Development Review Committee determines, which do not change the basic concept or character of the development.

2. Owners Association. There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (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 road and parking areas ("Reserve"), 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' properties 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.

Owner shall maintain all common areas on the Property until 90% of the lots/units on the Property have been sold to minimize Association dues during that period so as to not adversely affect purchaser's ability to qualify for a home mortgage. At the time Owner's maintenance obligation under this Section ends, there shall be at least \$12,960.00 in the Reserve and Owner shall supply evidence of the same to the Planning Director prior to final subdivision approval.

3. Water Conservation. See Exhibit "A" attached.

4. Affordable Housing. A minimum of 24 of the lots with townhouse dwelling units shall be reserved and offered for sale at a net sales price to buyer at or below \$110,000.00 subject to adjustment as set forth herein. If required by James City County Housing, a second deed of trust shall be assigned unto James City County Housing for the difference of the appraised value of the townhouse and the net sales price paid by the purchaser of the townhouse, which shall be reflected on a settlement statement for review prior to closing. This deed of trust shall, subject to the request of James City County Housing, be assigned at the time of closing, utilizing appropriate approved procedures and identifying the net sales price paid by the purchaser of the townhouse for the 24 townhouses sold through James City County for \$110,000 or less ("Affordable Units"). The second deed of trust will be prepared by the Owner as a 15 year forgivable loan in a form approved by Housing and Community Development, the County Attorney, and Virginia Housing Development Authority. A minimum of 38 of the lots with townhouse dwelling units shall be reserved and offered for sale at a price at or below \$155,000.00 subject to adjustment as set forth herein ("Restricted Units"). The maximum prices set forth herein shall be adjusted annually, or January 1st of each year,

by increasing such prices by the cumulative rate of inflation as measured by the Consumer Price Index – Urban, U.S. City Average annual average change for the period from January 1, 2005 until January 1 of the year in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis.

5. Archaeology. See Exhibit “A” attached.
6. Route 60 Landscape Buffer. See Exhibit “A” attached.
7. Entrance/Turn Lanes. See Exhibit “A” attached.
8. Underground Storage Tanks. See Exhibit “A” attached.
9. Sidewalk Connections. There shall be two sidewalk connections from the internal sidewalks in the development to the sidewalk adjacent to Route 60 generally as shown on the Master Plan. Sidewalks may be installed in phases as residential units are constructed. Sidewalks shall be installed prior to issuance of certificates of occupancy for adjacent dwelling units.
10. Sidewalk Design. See Exhibit “A” attached.
11. Pedestrian Trail. See Exhibit “A” attached.
12. Private Streets. See Exhibit “A” attached.
13. Architectural Elevations. The architecture and exterior elevations of the dwelling units on the Property shall be generally consistent with the revised Proposed

Typical Elevations for Pocahontas Square dated February 24, 2005, as determined by the Director of Planning.

14. Cash Contributions for Community Impacts.

(a) A contribution of \$1,275.00 for each Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the property, including, without limitation, for school use.

(b) A contribution of \$425.00 for each Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(c) A contribution of \$3,750.00 for each dwelling unit other than an Affordable Unit or a Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the property, including, without limitation, for school use.

(d) A contribution of \$1,250.00 for each dwelling unit other than an Affordable Unit or a Restricted Unit on the Property shall be made to the County in order to mitigate impacts on the County from the physical development and operation of the Property. The County may use these funds for any project in the County's capital improvement plan, the need for which is generated in whole or in part by the physical development and operation of the Property, including without limitation, for emergency services, school uses, off-site road improvements, library uses, and public use sites.

(e) The contributions described above, unless otherwise specified, shall be payable prior to final approval of the site plan or subdivision plat for such unit.

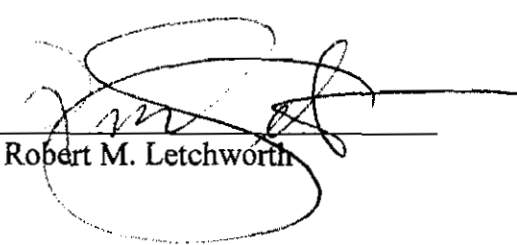
(f) The per unit contribution(s) paid in each year pursuant to this Section shall be adjusted annually beginning January 1, 2006 to reflect any increase or decrease for the preceding year in the Consumer Price Index, U.S. City Average. All Urban Consumers (CPI-U) All Items (1982-84 = 100) (the "CPI") prepared and reported monthly by the U.S. Bureau of Labor Statistics of the United States Department of Labor. In no event shall the per unit contribution be adjusted to a sum less than the amounts set forth in paragraphs (a) through (d) 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 CPI as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPIs as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the CPI as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the CPI, then the per unit contribution shall be adjusted based upon the figure that would have resulted had no change occurred in the

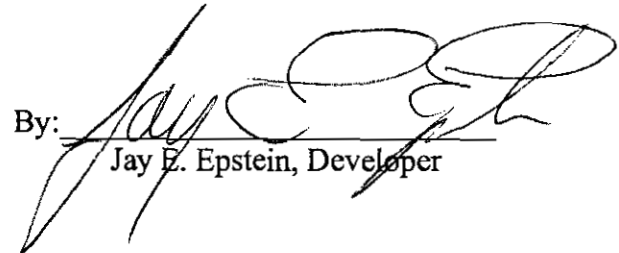
manner of computing CPI. In the event that the CPI is not available, a reliable government or other independent publication evaluating information heretofore used in determining the CPI (approved in advance by the County Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes of increasing the per unit contribution to approximate the rate of annual inflation in the County.

ALL OTHER PROFFERS, RECITALS AND CONDITIONS SHALL REMAIN THE SAME.

WITNESS the following signatures:



RML III, CORPORATION

By: 
Robert M. Letchworth

By: 
Jay E. Epstein, Developer

Commonwealth of Virginia
CITY/COUNTY OF Newport News, to wit:


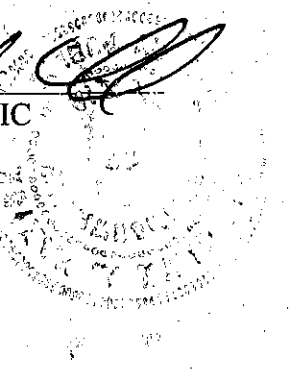
The foregoing instrument was acknowledged this 16th day of April, 2005, by Robert M. Letchworth.


NOTARY PUBLIC


My commission expires: Nov. 30, 2005

Commonwealth of Virginia
CITY/COUNTY OF Newport News, to wit:

The foregoing instrument was acknowledged this 16th day of April, 2005, by Jay E. Epstein.


NOTARY PUBLIC


My commission expires: Nov. 30, 2005

(342796)

PROFFERS

THESE PROFFERS are made this 31st day of July, 2003 by ROSE MARIE HALL (together with her successors and assigns, the "Owner") and RML III CORPORATION.

RECITALS

A. Owner is the owner of three contiguous tracts or parcels of land located in James City County, Virginia, one with an address of 8814 Pocahontas Trail, Williamsburg, Virginia and being Tax Parcel 5920100004, the second with an address of 8838 Pocahontas Trail, Williamsburg, Virginia and being Tax Parcel 5920100005A, and the third with an address of 8844 Pocahontas Trail, Williamsburg, Virginia and being Tax Parcel 5920100005 (together, the "Property"). A portion of the Property is now zoned LB and a portion is now zoned R-8.

B. RML III Corporation and/or assigns ("Buyer") has contracted to purchase the Property conditioned upon the rezoning of the Property.

C. Owner and Buyer have applied to rezone the Property from LB and R-8 to R-5, Multifamily Residential District, with proffers.

D. Buyer has submitted to the County a master plan entitled "Master Plan of Pocahontas Square" prepared by MSA, P.C. dated 05/13/2003 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

Instrument # 030024660

Recorded on Aug. 21, 2003

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EXHIBIT

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E. Owner and Buyer desire to offer to the County certain conditions on the development of the Property not generally applicable to land zoned R-5.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2297 of the Code of Virginia, 1950, as amended, and the County Zoning Ordinance, Owner agrees that it shall meet and comply with all of the following conditions in developing the Property. If the requested rezoning is not granted by the County, these Proffers shall be null and void.

CONDITIONS

1. Master Plan. The Property shall be subdivided and developed generally as shown on the Master Plan, with only minor changes thereto that the Development Review Committee determines do not change the basic concept or character of the development.

2. Owners Association. There shall be organized an owner's association or associations (the "Association") in accordance with Virginia law in which all property owners in the development, by virtue of their property ownership, shall be members. The articles of incorporation, bylaws and restrictive covenants (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, 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' properties 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.

3. **Water Conservation.** Water conservation standards shall be submitted to and approved by the James City Service Authority and Owner and/or the Association shall be responsible for enforcing these standards. The standards shall address such water conservation measures as limitations 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. The standards shall be approved by the James City Service Authority prior to final site plan or subdivision approval.

4. **Affordable Housing.** A minimum of 75 percent of the lots with dwelling units shall be reserved and offered for sale at a price at or below \$100,000.00 subject to adjustment as set forth herein. The balance of the lots with dwelling units shall be

reserved and offered for sale at a price at or below \$110,000.00 subject to adjustment as set forth herein. The maximum prices set forth herein shall be adjusted annually as of January 1 of each year by increasing such prices by the cumulative rate of inflation as measured by the Consumer Price Index - Urban, U.S. City Average annual average change for the period from January 1, 2004 until January 1 of the year in question. The annual increase shall not exceed five percent (5%). The Director of Planning shall be provided with a copy of the settlement statement for each sale at a price at or below the maximum prices set forth above. Owner shall consult with and accept referrals of, and sell to, potential qualified buyers from the James City County Office of Housing and Community Development on a non-commission basis.

5. Archaeology. A Phase I Archaeological Study for the entire Property shall be submitted to the Director of Planning for review and approval prior to land disturbance. A treatment plan shall be submitted and approved by the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation and/or identified as eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are

determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase III study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study areas. All Phase I, Phase II, and Phase III studies shall meet the Virginia Department of Historic Resources' *Guidelines for Preparing Archaeological Resource Management Reports* and the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation*, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's *Professional Qualification Standards*. All approved treatment plans shall be incorporated into the plan of development for the Property and the clearing, grading or construction activities thereon.

6. **Route 60 Landscape Buffer**. There shall be a 50 foot landscape buffer along the Route 60 frontage of the Property measured from the edge of right-of-way after the installation of the proffered turn lanes generally as shown on the Master Plan.

Prior to the County being obligated to grant final development plan approval for the Property, a landscaping plan for the 50 foot landscape buffer along the Route 60 frontage of the Property consistent with this Condition shall be prepared and submitted for review and approval of the Director of Planning. The landscaping plan shall include additional shrubs to supplement the trees in the buffer and to buffer the adjacent parking areas generally as shown on the Master Plan and, where possible shall require that existing mature/specimen trees and groups of trees be protected and preserved to promote a sense of maturity to the landscape. In addition, the landscape plan for the entire project where possible shall require that existing mature/specimen trees and groups of trees located in setback or other open space areas be protected and preserved to promote a sense of maturity to the landscape. Mature/specimen trees to be preserved shall be identified on the site plan for the development. The approved landscaping plan shall be either (i) implemented in the development of the Property or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy. The buffer shall be exclusive of any lots or units and shall be undisturbed, except for the landscaping proffered herein and, with the approval of the Development Review Committee, utilities, the entrance as shown

generally on the Master Plan, the pedestrian trail proffered hereby, lighting, entrance features and signs.

7. Entrance/Turn Lanes. There shall be one entrance into the Property from Pocohantas Trail. The entrance shall have two exiting lanes and one entering lane. Right and left turn lanes and tapers shall be constructed at the entrance to the Property from Route 60. The right turn lane shall have 150 feet of storage and a 150 foot taper and the left turn lane shall have 200 feet of storage and a 200 foot taper. The turn lanes and tapers proffered hereby shall be constructed in accordance with Virginia Department of Transportation standards and shall be completed prior to the issuance of the first certificate of occupancy.

8. Underground Storage Tanks. The existing underground storage tanks on the Property (which were taken out of service in June 1986) shall be removed in accordance with applicable laws, regulations and ordinances prior to the issuance of the first certificate of occupancy.

9. Sidewalk Connections. There shall be two sidewalk connections from the internal sidewalks in the development to the sidewalk adjacent to Route 60 generally as shown on the Master Plan. These connections shall be installed prior to the issuance of the first certificate of occupancy.

Z-03-03
Pocahontas Square

PR-082

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10. Sidewalk Design. The design of the sidewalks adjacent to parking areas shall be subject to the approval of the Director of Planning to ensure adequate sidewalk width to provide for pedestrian circulation.

11. Pedestrian Trail. There shall be a paved walking trail at least four feet in width installed on the Property generally as shown on the Master Plan. The trail shall be located to avoid mature or specimen trees where reasonably feasible and the exact location of the trail shall be approved by the Director of Planning. The trail shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the issuance of any certificates of occupancy.

12. Private Streets. The private streets in the development shall be constructed in accordance with applicable County standards for private streets.

13. Architectural Elevations. The architecture and exterior elevations of the dwelling units on the Property shall be generally consistent with the Proposed Typical Elevations for Pocahontas Square dated 5/13/03 submitted as a part of the Community Impact Statement as determined by the Director of Planning.

Z-03-03
Pocahontas Square

PR-082

WITNESS the following signature.)

Rose Marie Hall
Rose Marie Hall

RML III Corporation

By: J. O. Meyers, Jr.
Title: DIRECTOR

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 1st
day of August, 2003, by Rose Marie Hall.

Barbara J. Claus
NOTARY PUBLIC

My commission expires: 1/31/07.

STATE OF VIRGINIA AT LARGE
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing instrument was acknowledged this 1st
day of August, 2003, by James O. Meyers, Jr., as
Director of RML III Corporation on behalf of the corporation.

Barbara J. Claus
NOTARY PUBLIC

My commission expires: 1/31/07.

Prepared by:
Vernon M. Geddy, III, Esquire
Geddy, Harris, Franck & Hickman, LLP
1177 Jamestown Road
Williamsburg, VA 23185
(757) 220-6500

Z-03-03 PR-082
Pocahontas Square

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 9th May 05
at 10:48 AM/PM. The taxes imposed by Virginia Code
Section 58.1-801, 58.1-802 & 58.1-814 have been paid.

STATE TAX LOCAL TAX ADDITIONAL TAX

\$ _____ \$ _____ \$ _____
TESTE: BETSY B. WOOLRIDGE, CLERK

17917 BY: Betsy B. Woolridge Clerk