

060 027117

PROFFERS

THESE PROFFERS are made this ~~29th~~ day of August, 2006 by FLF, LLC, a Virginia limited liability company (together with its successors and assigns, the "Owner") and HHHUNT HOMES OF HAMPTON ROADS, LLC, a Virginia limited liability company ("Buyer").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 1916 Jamestown Road, Williamsburg, Virginia and being Tax Parcel (46-4)(1-17), being more particularly described on Exhibit A attached hereto (together, the "Property"). The Property is now zoned R-8.

B. 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 R-8 to R-2, General Residential District, with proffers

D. Buyer has submitted to the County a master plan entitled "Master Plan Rezoning and Special use Permit for Mason Park for HHHunt - Hampton Roads, LLC." prepared by AES Consulting Engineers dated April 24, 2006, last revised August 3, 2006 (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.



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-2.

NOW, THEREFORE, for and in consideration of the approval of the requested rezoning, and pursuant to Section 15.2-2298 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.

CONDITION

1. **Master Plan.** The Property shall be 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. There shall be no more than 15 single-family detached dwelling units within detached garages on the Property.

2. **Owners Association.** There shall be organized an owner's association (the "Association") in accordance with Virginia law in which all lot owners in the Property, 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 and recreation areas, and shall require that each initial purchaser of a lot make a capital contribution to the Association for reserves in an amount at least equal to one-sixth of the annual general assessment and 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.** (a) Water conservation standards shall be submitted to the James City Service Authority ("JCSA") as a part of the site plan or subdivision submittal for development on the Property 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 JCSA prior to final subdivision plat approval.

(b) The Governing Documents shall provide that no more than 30% of the area of any residential lot on Property may be irrigated. Common areas shall not be irrigated from public water resources. Any irrigation well for the development shall be approved by the JCSA General Manager and will only be permitted to withdraw from the Aquia or Potomac aquifers.

**4. Cash Contributions for Community Impacts.** For each dwelling unit on the Property the one time cash contributions set forth in this Section 4 shall be made.

(a) A contribution of \$1,093.00 for each lot on the Property shall be made to the James City Service Authority ("JCSA") in order to mitigate impacts on the County from the physical development and operation of the Property. The JCSA may use these funds for development of alternative water sources or any project related to improvements to the JCSA water system, the need for which is generated by the physical development and operation of the Property.

(b) A contribution of \$1,000.00 for each lot 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 by the physical development and operation of the Property, including, without limitation, for emergency services equipment replacement and supply, off-site road improvements, library uses, and public use sites.

(c) A contribution of \$4,011.00 for each lot 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 by the physical development and operation of the property, including, without limitation, school uses.

(d) A contribution of \$500.00 for each lot on the Property shall be made to the County in order to mitigate impacts on the County from the physical development 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 by the physical development and operation of the Property, including, without limitation, for off-site stream restoration elsewhere in the Powhatan Creek watershed.

(e) The contributions described above, unless otherwise specified, shall be payable for each dwelling unit on the

Property at or prior to the final approval of the site plan or subdivision plat for such lot.

(f) The per lot contribution(s) paid pursuant to this Section shall be adjusted annually beginning January 1, 2007 to reflect any increase or decrease for the preceding year in the Marshall and Swift Building Costs Index (the "Index"). In no event shall the per lot contribution be adjusted to a sum less than the amounts set forth in paragraphs (a), (b), (c), and (d) of this Section. The adjustment shall be made by multiplying the per lot contribution for the preceding year by a fraction, the numerator of which shall be the Index as of December 1 in the year preceding the calendar year most currently expired, and the denominator of which shall be the Index as of December 1 in the preceding year. In the event a substantial change is made in the method of establishing the Index, 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 the Index. 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 Manager of Financial Management Services) shall be relied upon in establishing an inflationary factor for purposes

of increasing the per lot contribution to approximate the rate of annual inflation in the County.

**5. Jamestown Road Buffer.** There shall be a minimum 150 foot buffer along the Jamestown Road frontage of the Property generally as shown on the Master Plan. The buffer shall be exclusive of any lots. The entrance and entrance road designed as shown generally on the Master Plan, landscaping and berms, the soft surface trails and 8' multi-use paved trail as shown generally on the Master Plan, and with the approval of the Development Review Committee, utilities, fences, bioretention facilities, lighting, entrance features and signs shall be permitted in the buffer. A combination of preservation of existing trees, and landscaping (meeting or exceeding ordinance requirements as to quantity but utilizing plant materials with a size of at least 125% of ordinance requirements) shall be provided within the buffer in accordance with a landscaping plan approved by the Director of Planning which, when the landscaping has reached maturity, shall screen the adjacent homes and garages from the direct view of vehicles traveling on Jamestown Road. The buffer shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units located on the Property.

6. **Side Perimeter Buffers**. The perimeter buffer on the north side of the Property between the Jamestown Road buffer and the natural open space easement area proffered by paragraph 9 (b) shall contain "enhanced landscaping" (defined as plant materials with a size of at least 125% of ordinance requirements) in accordance with a landscaping plan approved by the Director of Planning. The perimeter buffer on the south side of the Property between the Jamestown Road buffer and the natural open space easement area proffered by paragraph 9 (b) shall be landscaped in accordance with a landscaping plan approved by the Director of Planning. At the request of the Director of Planning after review of the landscape plan submitted by Owner, Owner shall install "enhanced landscaping" (defined as plant materials with a size of at least 125% of ordinance requirements) in this buffer. The buffers shall be planted or the planting bonded prior to the County being obligated to issue certificates of occupancy for dwelling units located on the Property.

7. **Entrance**. There shall be one entrance into the Property to and from State Route 680 as generally shown on the Master Plan. The entrance shall be designed and constructed in accordance with the current Virginia Department of Transportation standards of entrances to state highways,



including provision for sight distances. There shall not be a median in the entrance road.

8. **Recreation.** Owner shall provide a tot lot and open play field with approximate dimensions of 60 feet by 90 feet, approximately .84 acres of parkland, approximately .51 miles of trail with exercise stations, and a gazebo. All recreation facilities shall be constructed in accordance with County standards and shall be conveyed to the Association. In lieu of a court and ball field, Owner shall make a cash contribution in an amount equal to \$1,425.00 escalated from 1993 dollars to dollars for the year the contributions are made using the formula in Section 4(f) to the County at the time set forth in section 4(e). All cash contributions proffered by this Proffer 8 shall be used by the County for recreation capital improvements. The exact locations of the facilities proffered hereby and the equipment to be provided at such facilities shall be subject to the approval of the Director of Planning.

9. **Environmental Protections.** (a) Owner shall submit to the County a master stormwater management plan as a part of the development plan submittal for the Property, including facilities and measures necessary to meet the County's 10 point stormwater management system requirements and the special stormwater criteria applicable in the Powhatan Creek watershed,

and, in addition, including additional bioretention facilities and other low impact design features generally as illustrated on the Master Plan which include, without limitation, dry swales, porous pavement in driveway parking areas and at least one rain barrel per unit, and other design features such as use of grass strips in driveways to reduce impervious cover consistent with the goals of the Powhatan Creek Watershed Management Plan, for review and approval by the Environmental Division. The Governing Documents shall provide that lot owners may repair, maintain and replace low impact design features located on their lot, such as porous pavement, rain barrels and grass strips in driveways, only with comparable features. The master stormwater management plan may be revised and/or updated during the development of the Property with the prior written approval of the Environmental Director. The County shall not be obligated to approve any final development plans for development on the Property until the master stormwater management plan has been approved. The approved master stormwater management plan, as revised and/or updated, shall be implemented in all development plans for the Property.

(b) Prior to the issuance of any land disturbing permits for development pursuant to the Master Plan, Owner shall grant a natural open space easement to the County over the area within

the limits shown as "Existing Tree Line, Also Limits of Priority Conservation Areas C-42/C-43" on Exhibit B hereto. The easement area shall remain undisturbed except the easement shall permit, with the prior approval of the County Engineer, the installation of a sewer line crossing the easement area and an outfall for the storm water management pond and the installation of a soft surface walking trail to be designed and field located to avoid the necessity of clearing any mature trees.

**10. Archaeology.** A Phase I Archaeological Study for the Property shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to, 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 being 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 II 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 area. 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 Standard 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 site and shall be adhered to during the clearing, grading and construction activities thereon.

**11. Architectural Review.** Owner shall prepare and submit design review guidelines to the Development Review Committee setting forth design and architectural standards for the development of the Property generally consistent with the typical architectural elevations included in the Community Impact Statement submitted with the Application for Rezoning, requiring that all garages on the Property be detached and located to the rear of the house and incorporating appropriate

and suitable green building practices as recommended in the NAHB Model Green Building Guidelines, 2006 edition, for the approval of the Director of Planning prior to the County being obligated to grant final approval to any development plans for the Property (the "Guidelines"). Once approved, the Guidelines may not be amended without the approval of the Director of Planning. Owner shall establish a Design Review Board to review all building plans and building elevations for conformity with the Guidelines and to approve or deny such plans. Prior to the issuance of a building permit for each house and garage on the Property, architectural plans for such house and garage shall be submitted to the Director of Planning for his review for consistency with the Guidelines. 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. All houses and garages shall be constructed in accordance with the approved plans. In the case of plans that will be used on more than one lot, Director of Planning approval need only be obtained for the initial building permit. All exterior colors on homes and garages shall be from the Martin Senour "Williamsburg" exterior paint color palette or the Sherwin Williams "Preservation

Palette" excluding the "Postwar Romanticism" colors from the latter.

**12. Preservation of Specimen Trees.** Owner shall submit a tree survey of the buffers on Property with the site plan for development of the Property and shall use its best efforts to preserve trees located within the 150 foot Jamestown Road buffer identified on the survey as specimen trees to be preserved.

**13. Streetscape Guidelines.** The Owner shall provide and install streetscape improvements in accordance with the applicable provisions of the County's Streetscape Guidelines policy except as described in the letter to the County from AES Consulting Engineers dated August 28, 2006 modifying the applicant's request for reduced street widths, a copy of which is on file in the Planning Department. The streetscape improvements shall be shown on development plans for the Property and submitted to the Director of Planning for approval during the subdivision approval process. Streetscape improvements shall be either (i) installed or (ii) bonded in form satisfactory to the County Attorney prior to the approval of the final subdivision plat of the Property. The Association shall provide annual maintenance of all street trees to ensure that no branches intrude into any internal subdivision roadway below the 13' 6" fire vehicle clearance requirement.

**14. Nutrient Management Plan.** The Association shall be responsible for contacting 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 to conduct soil tests and to develop, based upon the results of the soil tests, customized nutrient management plans (the "Plans") for all common areas within the Property and each individual lot. The Plans shall be submitted to the County's Environmental Director for his review and approval prior to the issuance of building permits for houses on the Property. Upon approval, the Association shall be responsible for ensuring that any nutrients applied to common areas which are controlled by the Association be applied in strict accordance with the Plan. The Owner shall provide a copy of the individual Plan for each lot to the initial purchaser thereof. Within 12 months after issuance of the Certificate of Occupancy for the final dwelling unit on the Property and every three years thereafter, a turf management information seminar shall be conducted on the site. The seminar shall be designed to acquaint residents with the tools, methods, and procedures necessary to maintain healthy turf and landscape plants.

**15. Sidewalks.** There shall be sidewalks five feet in width installed along one side of all streets within the Property generally as shown on the Master Plan. Owner shall, in lieu of installing a sidewalk along the Route 680 frontage of the Property, install an 8' wide paved trail across the Route 680 frontage of the Property connecting to the adjacent parcels to the north and south and to Route 680 in the general location shown on the Master Plan.

**16. Curb and Gutter.** Streets within the Property shall be constructed with curb and gutter provided, however, that this requirement may be waived or modified along those segments of street, including entrance roads, where structures are not planned.

**17. Entrance Sign.** Any entrance sign shall be a monument style sign no more than four feet in height. Owner shall submit an elevation of the entrance sign to the Director Of Planning for his reviewed and approval prior to installation of the sign.

**18. Construction Start.** No construction activity other than the demolition of existing structures and installation of landscaping shall take place before January 1, 2008.



WITNESS the following signatures.

FLF, LLC

By:

Title:

*G. W. J. [Signature]*  
MEMBER/OWNER

HHHunt Homes of Hampton  
Roads, LLC

By:

Title:

STATE OF VIRGINIA AT LARGE

CITY/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged this 5  
day of September, 2006, by Griffin W. Fernando, as  
of FLF, LLC, a Virginia limited liability company,  
of behalf of the company

*Christina C. Henke*  
NOTARY PUBLIC

My commission expires: September 30, 2007.

STATE OF VIRGINIA AT LARGE

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

The foregoing instrument was acknowledged this \_\_\_\_\_  
day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as  
of HHHunt, Homes of Hampton Roads, LLC on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

WITNESS the following signatures.

FLF, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

HHHunt Homes of Hampton  
Roads, LLC

By: [Signature]  
Title: MANAGER

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

The foregoing instrument was acknowledged this \_\_\_\_\_  
day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as  
\_\_\_\_\_ of FLF, LLC, a Virginia limited liability company,  
of behalf of the company

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

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

The foregoing instrument was acknowledged this 29th  
day of August, 2006, by Steve U. Miller, as Manager  
of HHHunt, komes of Hampton Roads, LLC on behalf of the company.

[Signature]  
NOTARY PUBLIC

My commission expires: 12/31/09

**EXHIBIT A**

PARCEL ONE

All that certain lot, piece or parcel of land containing 4.91 acres by survey, but conveyed in gross and not by acre, situate, lying and being in Jamestown District, James City County, Virginia, as shown on that certain plat entitled "JAMESTOWN DISTRICT, JAMES CITY COUNTY, VA., PLAT SHOWING BOUNDARY SURVEY OF A PARCEL OF LAND FOR FRANK AND MARY K. FERNANDEZ, BEING PART OF AMBLER'S PLANTATIOIN", dated December 10, 1963, and made by Vincent D. McManus, Certified Surveyor, said plat being recorded in the Office of the Clerk of Circuit Court for the City of Williamsburg and the County of James City Virginia in Deed Book 94, page 55, to which plat reference is here made for a more particular description.

PARCEL TWO

All that certain lot or parcel of land situate in Jamestown District, James City County, Virginia, set up, shown and described on a plat of survey thereof entitled "Plat of part of A.C. Ammons prop.: Standing in the name of Charles W. Bulifant, Jamestown District, James City County, Va.," made by Stephen Stephens, Certified Land Surveyor, in April 1963, and whereon said land is shown to contain 4.202 acres, and is described by metes and bounds, courses and distances, and said plat is recorded in Plat Book 20, page 40, and is hereby made a part hereof by reference.

Parcels One and Two are a portion of the property conveyed to FLF, LLC by Deed dated July 14, 1998 recorded in the aforesaid Clerk's Office as Instrument No. 980014306, as corrected by Deed of Correction dated February 9, 2000 recorded in the aforesaid Clerk's Office as Instrument No. 000007980.

Prepared by:

Geddy, Harris, Franck & Hickman, LLP  
1177 Jamestown Road  
Williamsburg, Virginia 23185

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 6 Nov 06  
at 2:44 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

BY: Betsy B. Woolridge Clerk