

070016264

PROFFERS

THESE PROFFERS are made this 11 day of March, 2007 by WILLIAMSBURG POTTERY FACTORY, INC., a Virginia corporation (together with its successors and assigns, the "Owner").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 6692 Richmond Road, Williamsburg, Virginia, being Tax Parcel 2430100024, and containing 18.9± acres, being more particularly described on Exhibit A attached hereto (the "Property"). The Property is now zoned A-1 and M-1.

B. Owner has applied to rezone the Property from A-1 and M-1 to M-1, with proffers, and for a special use permit to construct a shopping center on the Property.

C. Owner has submitted to the County a master plan entitled "Rezoning and Special Use Permit for the Promenade at the Williamsburg Pottery for the Williamsburg Pottery Factory Inc", prepared by AES Consulting Engineers dated November 29, 2006, and revised January 25, 2007, (the "Master Plan") for the Property in accordance with the County Zoning Ordinance.

E. Owner desires to offer to the County certain conditions on the development of the Property not generally applicable to land zoned M-1.

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.

## CONDITIONS

1. **Master Plan.** The Property shall be redeveloped 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. **Water Conservation.** The Owner shall be responsible for developing water conservation standards to be submitted to and approved by the James City Service Authority and subsequently 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. Irrigation wells shall only draw water from the Upper Potomac or Aquia Aquifers and shall be subject to the approval of the General Manager of James City Service Authority. The standards shall be approved by the James City Service Authority prior to final site plan approval.

4. **Road Improvements/Entrances.** (a) The entrance into Parcel 3 of the Property shall be located at the approximate location shown on the Master Plan as "Relocated Signalized Crossover" and the location shall be shown on the site plan for the Property and subject to the approval of the Director of Planning and the Virginia Department of Transportation ("VDOT"). When the entrance is relocated, the existing entrance shall be closed and the existing crossover labeled on the Master Plan as "Signalized Crossover to be Relocated" shall be closed within 30 days of the completion of the new entrance. At the entrance (i) an eastbound left turn lane with 200 feet of

storage and a 200 foot taper; (ii) a westbound left turn lane with 200 feet of storage and a 200 foot taper and (iii) a westbound right turn lane with 150 feet of storage and a 200 foot taper shall be constructed and a new traffic signal shall be installed. Three egress lanes with at least 100 feet of storage consisting of two dedicated left turn lanes and one dedicated right turn lane shall be constructed at this entrance. Construction of these improvements shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(b) Owner shall install a right in, right out entrance to the Property from Route 60 on Parcel 2 of the Property in the approximate location shown on the Master Plan connecting to the existing Pottery access road. When this entrance is installed, a westbound right turn lane from Route 60 into this entrance with 150 feet of storage and a 200 foot taper shall be constructed. One egress lane and one ingress lane with a raised channelizing island shall be constructed at this entrance. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(c) Owner shall install a new entrance from Route 60 into Parcel 1 of the Property at the Colonial Heritage east crossover in the approximate location shown on the Master Plan as "Proposed Traffic Signal at Crossover per Colonial Heritage Rezoning Conditions". When this entrance is constructed, a westbound right turn lane with 150 feet of storage and a 200 foot taper and an eastbound left turn lane shall be constructed. Three egress lanes with 200 feet of storage consisting of two dedicated left turn lanes and

one dedicated right turn lane and one ingress lane shall be constructed at this entrance. Owner shall be responsible for and shall pay the costs of any necessary modifications to the traffic signal proffered for this intersection by Colonial Heritage so the signal will serve this entrance to and from the Property. At such time as a traffic signal is installed at this intersection and subject to VDOT approval. Owner shall install or pay the costs of installation of crosswalks, median refuge islands, signage and pedestrian signal heads at the intersection. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(e) Owner shall construct a right in, right out only entrance from Parcel 1 of the Property onto westbound Route 60 at the western end of the Property in the approximate location shown on the Master Plan. When this entrance is constructed, a westbound right turn lane with 150 feet of storage and a 200 foot taper shall be constructed. Construction shall be completed or bonded in form satisfactory to the County Attorney prior to the County being obligated to issue building permits for any building in the phase of the development served by this entrance.

(f) The turn lanes and entrances, crosswalks, median refuge islands, signage and pedestrian signal heads proffered hereby shall be constructed in accordance with VDOT standards and shall be approved by VDOT.

(g) The right turn lanes and entrances proffered hereby shall include four foot shoulder bike lanes.

(f) Prior to the County being obligated to issue building permits for more than 115,000 square feet of buildings on the Property, Owner shall conduct a traffic signal

warrant study at the entrance from Route 60 into Parcel 2 of the Property at the Colonial Heritage east crossover in the approximate location shown on the Master Plan as “Proposed Traffic Signal at Crossover per Colonial Heritage Rezoning Conditions” and submit the study to the County and VDOT for their review and approval.

(g) At the time of site plan submittal, Owner shall submit to the County a traffic study of the Saturday peak hour traffic at the Property for the review and approval of the Director of Planning and shall incorporate any modifications to the improvements proffered in this Section that the study indicates are required.

(h) After approval of the first final site plan for the redevelopment of the Property and within 30 days of a request from VDOT, Owner shall pay to VDOT a pro rata share (based on 1.5 signals divided by the total number of signals included in the project) of any VDOT Route 60 signal coordination project that includes the signalized intersections at entrances into the Property. The costs of the signal coordination project may include traffic signal equipment and utility relocation within the existing right of way and easements to accommodate traffic signal equipment, but will not include any right of way acquisition expenses or road construction changes.

**5. Lighting.** All light poles on the Property shall not exceed 30 feet in height. All external lights on the Property shall be recessed fixtures with no globe, bulb or lens extending below the casing or otherwise unshielded by the case so that the light source is visible from the side of the fixture. No glare defined as 0.1 footcandle or higher shall extend outside the property lines of the Property unless otherwise approved by the Director of Planning. Owner shall submit a lighting plan to the Director of Planning for review and approval for consistency with this Proffer prior to final site plan approval.

**6. Route 60 Buffer.** There shall be a variable width community character corridor buffer with a minimum average width of 37 feet and a minimum width of 20 feet along the Route 60 frontage of the Property generally as shown on the Master Plan. The buffer shall contain enhanced (defined as 125% of Ordinance size requirements) landscaping as shown on the Conceptual Landscape Plan for Route 60 Buffer made by AES Consulting Engineers dated March 19, 2007 submitted herewith and on file with the County Planning Department and a fence at least 42 inches in height approved by the Director of Planning. The fence shall also be installed along both sides of the entrance located on Parcel 1. A detailed landscape plan for the entire buffer shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The buffer shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

**7. Environmental.** (a) Stormwater from the Property will be directed away from the Yarmouth Creek watershed to reduce existing negative impacts to that watershed; provided, however, drainage from the community character corridor buffer area adjacent to the VDOT right-of-way and up to 15,000 square feet of impervious cover associated with entrances, sidewalks or similar features may drain to the VDOT right-of-way and thus will continue to drain to the Yarmouth Creek watershed.

(b) Owner shall upgrade the existing farm pond shown on the Master Plan as "Proposed Regional SWM Facility for the Williamsburg Pottery Factory Complex" to County standards to function as a Group A wet pond generally consistent with the provisions contained in the James City County Guidelines for the Design and

Construction of Stormwater Management BMP's, including any necessary channel improvements leading into the pond or bond the upgrade in form satisfactory to the County Attorney prior to the County being obligated to issue any building permits for building on the Property . The pond shall receive the redirected stormwater flows from the Property in addition to the existing flows from the Williamsburg Pottery Factory complex.

(c) Owner shall install six standard size tree box filters capable of treating stormwater from approximately one and one-half acres of impervious cover in the parking lots on the Property.

**8. Architectural Review.** (a) Owner has submitted to the County conceptual architectural renderings and Design Standards for the entire Property (the "Guidelines") prepared by Dayton & Thompson, PC and dated January 26, 2007, revised February 23, 2007, March 16, 2007 and March 23, 2007. All buildings, landscaping and site design on the Property shall be consistent with the Guidelines. No building on the property shall exceed thirty-five (35) feet in height as defined in the Zoning Ordinance.

(b) Prior to the County being obligated to grant final site plan approval for development of the Property, Owner shall submit to the Director of Planning conceptual architectural plans, including architectural elevations, for the buildings and any associated structures for the Director of Planning to review and approve for consistency with the Guidelines and this Proffer. Decisions of the Director of Planning may be appealed to the Development Review Committee, whose decision shall be final. Completed buildings shall be consistent with the approved plans.

9. **WAT Stop.** Owner shall retain the Williamsburg Area Transit (“WAT”) bus stop on the Property with a pull-off per VDOT standards in a location approved by Owner, WAT, the Director of Planning and VDOT. The location shall be shown on the site plan for the Property and approved prior to final site plan approval.

10. **Existing Railroad Crossing and Pedestrian Tunnel.** The existing railroad crossing and pedestrian tunnel under the railroad tracks shall be retained.

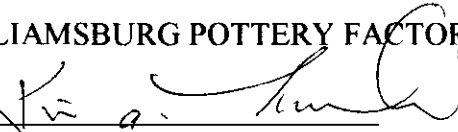
11. **Route 60 Median Planting.** Subject to VDOT approval, Owner shall install landscaping in the portion of the Route 60 median along the frontage of the Property not already landscaped by the Colonial Heritage project consistent with the landscaping provided by Colonial Heritage. A landscape plan for the median shall be submitted to the Director of Planning with the initial site plan for development on the Property for his review and approval for consistency with this proffer. The median shall be planted or the planting bonded in a form satisfactory to the County Attorney prior to the County being obligated to issue building permits for buildings located on the Property.

12. **Landscape Maintenance.** The Owner, or its agents or assigns, shall be responsible for the maintenance, repair and replacement of all landscaping materials, fences and barriers proffered hereby in accordance with standards set forth in Section 24-87(e) of the Zoning Ordinance.



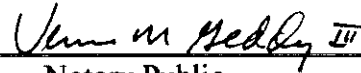
Witness the following signatures.

WILLIAMSBURG POTTERY FACTORY INC.

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

STATE OF VIRGINIA  
CITY/COUNTY OF WILLIAMSBURG

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of ~~January~~ <sup>March</sup>, 2007, by Kim A. Maloney as President of Williamsburg Pottery Factory, Inc. on behalf of the corporation.

  
Notary Public

My commission expires: 12/31/09

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

**Exhibit A**  
**Property Description**  
**Tax Map Parcel #(24-3)(1-24)**  
**Williamsburg Pottery Factory, Inc.**

All that certain piece, parcel or tract of land, situate, lying and being in the Stonehouse District of James City County, Virginia, containing total of 18.776 acres more or less and being more particularly described as follows:

Beginning at a point along the westerly right-of-way line of U.S. Route #60, Richmond Road, said point being approximately 2,885' in a northerly direction from the intersection of State Route #646, Lightfoot Road, a corner to the parcel described hereon and the property now or formerly standing in the name of Thomas C. and Carl A. Chestnut; thence leaving said corner and lying along the westerly right-of-way line of U.S. Route #60, Richmond Road, N38°34'10"W, a distance of 1,063.42' to a point, said point being along a curve to the right, having a radius of 957.22' and an arc length of 230.40' to a point; thence N24°46'43"W, a distance of 565.99' to a point; thence N65°21'48"E, a distance of 15.00' to a point; thence N24°46'43"W, a distance of 182.21' to a point, said point being along a curve to the right, having a radius of 1,105.92' and an arc length of 151.15' to a point, a corner to the property described hereon and the property now or formerly standing in the name of Action Park of Williamsburg, Va., Inc.; thence leaving said corner and right-of-way line of U.S. Route #60, Richmond Road and lying along the line of the property now or formerly standing in the name of Action Park of Williamsburg, Va., Inc., N65°14'53"E, a distance of 494.33' to a point, a corner to the property described hereon, the property now or formerly standing in the name of Action Park of Williamsburg, Va., Inc. and being a point along the westerly right-of-way line of CSX Transportation (formerly the C & O railroad); thence leaving said corner and lying along the westerly right-of-way line of CSX Transportation (formerly the C & O railroad), S20°19'32"E, a distance of 977.53' to a point, said point being along a non-tangent curve to the left, having a radius of 5,792.65' and an arc length of 1,146.89' to a point, a corner to the property described hereon, the property now or formerly standing in the name of Thomas C. and Carl A. Chestnut and being a point along the westerly right-of-way line of CSX Transportation (formerly the C & O railroad); thence leaving said corner and right-of-way line of CSX Transportation (formerly the C & O railroad) and lying along the line of the property now or formerly standing in the name of Thomas C. and Carl A. Chestnut, S53°05'15"W, a distance of 191.35' to the aforesaid point of beginning.

This being the same property as shown on that certain plat prepared by AES Consulting Engineers, dated January 8, 2007 and entitled "Plat of Survey, A Parcel of Land Containing 18.776 Acres+/- Standing in the Name of Williamsburg Pottery Factory, Inc., a copy of which is recorded herewith."

PLAT ATTACHED

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 7 June 07  
at 12:27 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
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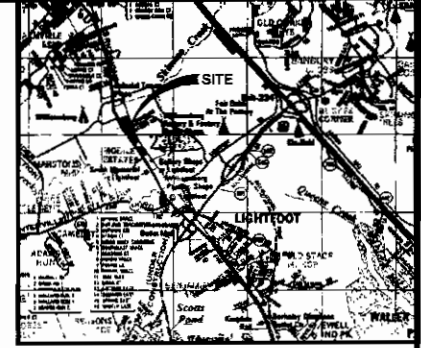
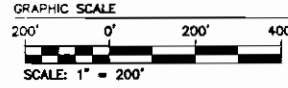
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TESTE: BETSY B. WOOLRIDGE, CLERK

BY: Betsy B. Woolridge Clerk

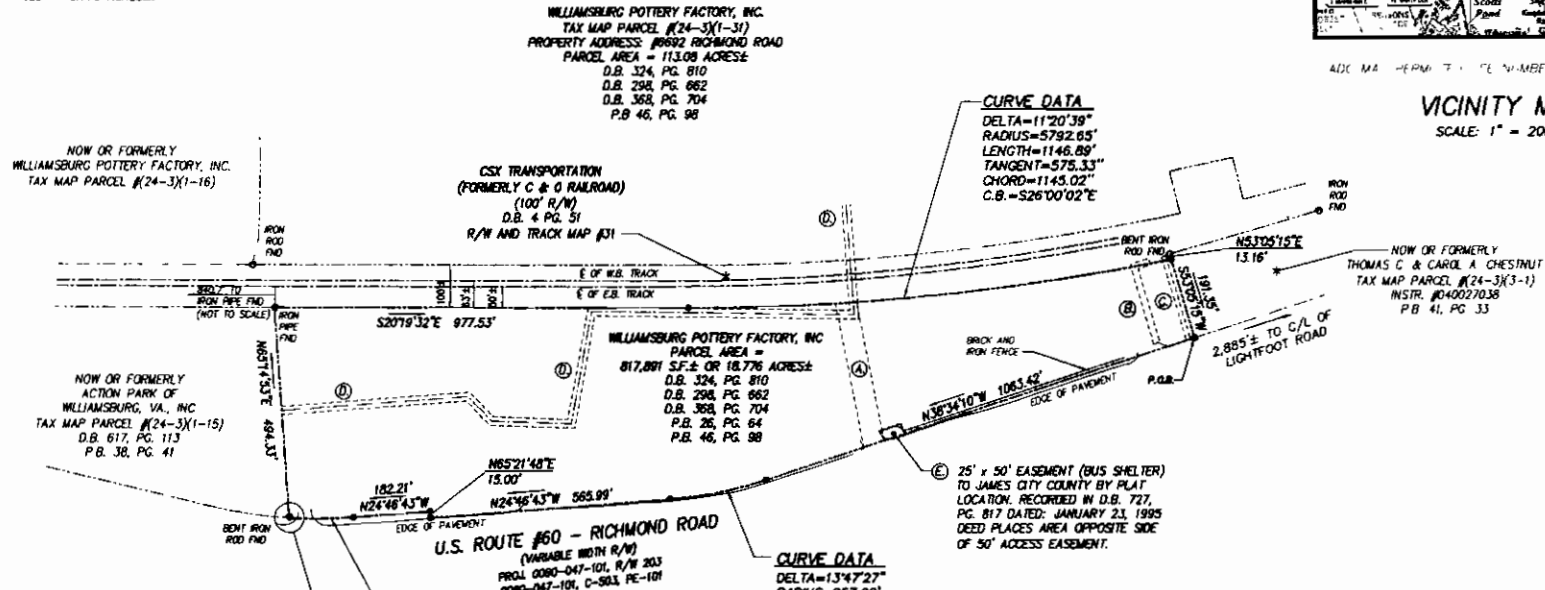
**GENERAL NOTES:**

1. THIS SURVEY IS BASED ON THE JAMES CITY COUNTY GEODETIC CONTROL NETWORK - VIRGINIA STATE PLANE COORDINATES - SOUTH ZONE 4502 - NAD 83 HORIZONTAL DATUM. THIS SURVEY WAS PREPARED USING CONVENTIONAL METHODS.
2. PROPERTY AS SHOWN LIES IN ZONE "C", AREAS TO BE OUTSIDE THE 500-YEAR FLOODPLAIN - 1. J.R.M. #10201-0020-B, DATED FEBRUARY 6, 1991.
3. PROPERTY AS SHOWN IS CURRENTLY ZONED M-1, LIMITED BUSINESS / INDUSTRIAL DISTRICT.
4. TOTAL AREA OF PARCEL = 18.776 ACRES.



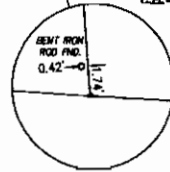
ADC MA - ERM: 7 - PL NUMBER 20605139

**VICINITY MAP**  
SCALE: 1" = 2000'



**EASEMENT NOTES:**

- EXISTING 50' INGRESS AND EGRESS EASEMENT SHOWN ON PLAT RECORDED IN P.B. 26, PG. 64 DATED: SEPTEMBER 24, 1969.
- EXISTING 15' WIDE CAR TELEPHONE EASEMENT GRANTED BY DEED RECORDED IN D.B. 298, PG. 47 DATED: MARCH 20, 1986.
- EXISTING 10' WIDE J.C.S.A. EASEMENT. D.B. 214, PGS. 257 - 260.
- EXISTING VARIABLE WIDTH J.C.S.A. EASEMENT GRANTED BY DEED RECORDED IN D.B. 185, PG. 150. DATED: MARCH 28, 1978, AND D.B. 185, PG. 152. DATED: JULY 6, 1977.
- EXISTING 25' x 50' EASEMENT TO JAMES CITY COUNTY BY DEED RECORDED IN D.B. 727, PG. 817 DATED: JANUARY 23, 1995.



**CURVE DATA**  
DELTA=7°49'51"  
RADIUS=1105.92'  
LENGTH=151.15'  
TANGENT=75.69'  
CHORD=151.03'  
C.B.=N20°51'48"W

**CURVE DATA**  
DELTA=13°47'27"  
RADIUS=957.22'  
LENGTH=230.40'  
TANGENT=115.78'  
CHORD=228.84'  
C.B.=N31°40'27"W

**ADDITIONAL REFERENCES:**

- DEED BOOK 27, PAGE 424 (V.E.P.CO. ESMT.)
- DEED BOOK 28, PAGE 383 (V.E.P.CO. ESMT.)
- V.E.P.CO. PLAT BOOK 6, PAGE 32
- DEED BOOK 27, PAGE 426 (V.E.P.CO. ESMT.)
- V.E.P.CO. PLAT BOOK 6, PAGE 13
- DEED BOOK 42, PAGE 496 (V.E.P.CO. ESMT.)
- DEED BOOK 67, PAGE 127 (V.E.P.CO. ESMT.)
- V.E.P.CO. PLAT BOOK 1, PAGE 287
- DEED BOOK 120, PAGE 639 (V.E.P.CO. ESMT.)
- V.E.P.CO. PLAT BOOK 3, PAGE 256
- PLAT BOOK 35, PAGE 12 (J.C.S.A. ESMT.)
- DEED BOOK 232, PAGES 149-151 (V.E.P.CO. ESMT.)
- DEED BOOK 262, PAGES 362-364 (V.E.P.CO. ESMT.)

**LEGEND**  
D.B. = DEED BOOK  
P.B. = PLAT BOOK  
PG. = PAGE  
P.O.B. = POINT OF BEGINNING  
----- EASEMENT LINES

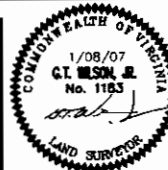
TAX PARCEL: (24-3)(1-24)  
STREET ADDRESS: #6692 RICHMOND ROAD



5248 Olde Towne Road, Suite 1  
Williamsburg, Virginia 23188  
(757) 253-0040  
Fax (757) 220-8994

**PLAT OF SURVEY**  
A PARCEL OF LAND CONTAINING 18.776 ACRES±  
STANDING IN THE NAME OF  
WILLIAMSBURG POTTERY FACTORY, INC.

STONEHOUSE DISTRICT      JAMES CITY COUNTY      VIRGINIA



No.	DATE	REVISION / COMMENT / NOTE	REVISED BY	REVIEWED BY
1.	5/1/07	ADDED P.O.B. AND ROAD BE DISTANCE	JOB	RWF

Designed	AES	Drawn	JDB
Scale	1"=200'	Date	1/08/07
Project No.	9510-01		
Drawing No.	1 OF 1		