

110009765

AMENDED AND RESTATED PROFFERS

THESE AMENDED AND RESTATED PROFFERS are made this 28th day of January, 2011 by WILLIAMSBURG POTTERY PROPERTIES, LLC., a Virginia limited liability company (together with its successors and assigns, the "Owner") ("Grantor"), for the benefit of JAMES CITY COUNTY, VIRGINIA ("Grantee").

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 18.78± acres, being more particularly described on Exhibit A attached hereto (the "Property"). The Property is now zoned M-1 and is subject to (i) Proffers dated March 19, 2007 and recorded in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Instrument No. 070016264 (the "Existing Proffers") and (ii) 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 last revised March 19, 2007, (the "Existing Master Plan").

B. Owner has applied to amend and restate the Existing Proffers and to amend the Existing Master Plan in certain respects.

C. Owner has submitted to the County an amended master plan entitled "Master Plan and Rezoning Amendment for the Williamsburg Pottery for the Williamsburg Pottery Factory, Inc.", prepared by AES Consulting Engineers with a revision date of January 27, 2011 (the "Amended Master Plan") for the Property in accordance with the County Zoning Ordinance.

Prepared by: Vernon Geddy, III, Esq., Geddy, Harris, Franck & Hickman, LLP, 1177 Jamestown Rd, Williamsburg, VA 23185.
Return to: County Attorney's Office, 101-C Mounts Bay Rd, Williamsburg, VA 23185, (757) 253-6612.

10

E. Owner desires to amend and restate the Existing Proffers in order to offer to the County certain amended 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 Amended and Restated Proffers shall be null and void and the Existing Proffers shall remain in full force and effect.

CONDITIONS

1. **Amended Master Plan.** The Property shall be redeveloped generally as shown on the Amended 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.

3. Road Improvements/Entrances. (a) With the prior approval of the Virginia Department of Transportation (“VDOT”), Owner may install a right in only entrance into the Property from Route 60 approximately in the middle of Parcel 3 of the Property.

When and if this entrance is constructed, a westbound right turn lane with 200 feet of storage and a 200 foot taper shall be constructed if necessary as determined by VDOT.

(b) The entrance into Parcel 2 of the Property shall be located at the approximate location shown on the Amended Master Plan as “Proposed 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 VDOT. When the entrance is relocated, the existing entrance shall be closed and the existing crossover labeled on the Amended Master Plan as “Signal and Crossover to be Removed and 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 200 feet of storage and a 200 foot taper shall be constructed and a new traffic signal shall be installed. Four egress lanes with at least 150 feet of storage consisting of two dedicated left turn lanes, one dedicated right turn lane and one ingress 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.

(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

Amended Master Plan as "Proposed Traffic Signal at Crossover per Colonial Heritage Rezoning Proffers". When this entrance is constructed, a westbound right turn lane with 200 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.

(d) 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 Amended Master Plan. When this entrance is constructed, a westbound right turn lane with 200 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.

(e) 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.

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

(g) 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.

4. 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.

5. 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 Amended 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 in the approximate locations shown on the Amended Master Plan and approved by the Director of Planning. 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.

6. 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 Amended 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.

7. **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.

8. **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.

9. **Existing Railroad Crossing and Pedestrian Tunnel.** The existing surface railroad crossing and pedestrian tunnel under the railroad tracks shall be retained subject to the provisions of this Proffer. Since the purpose of the tunnel is to provide a way for

pedestrians to safely cross the railroad tracks, if there is no need for pedestrians to cross the tracks given the use of the property on the north side of the tracks, with prior written notice to the Director of Planning, the tunnel may be temporarily blocked and taken out of service. If the tunnel remains continuously out of service for a period of six years, with prior written notice to the Director of Planning, the tunnel may be permanently closed.

10. 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.

11. 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*LLC *PROPERTIES

By: 

Title: Ex. V.P.

STATE OF VIRGINIA
CITY/COUNTY OF James City

The foregoing instrument was acknowledged before me this 28th day of January 2011, by Peter Kao as Executive Vice President of Williamsburg Pottery*LLC on behalf of the company.
*Properties


Notary Public

My commission expires:
Registration No.: 7350525

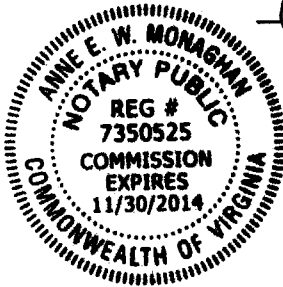


Exhibit A
Property Description

All those two (2) certain pieces or parcels of land situate in James City County, Virginia, as shown and set forth on plat of survey entitled "Lot Line Extinguishment Between Various Parcels of Land Standing In The Name of Maloney Family Trust" dated January 25, 1986, made by Paul C. Small, C.L.S., of record in the James City County Circuit Court Clerk's Office in Deed Book 298, page 664, which plat is herein incorporated by reference; BEING a portion of the same property conveyed to the Grantor herein named by deed dated December 1, 1986, from Frederick C. Maloney, Trustee, Maloney Family Trust which deed is of record in the Clerk's Office of the Circuit Court of James City County, Virginia in Deed Book 324, page 810.

This tract is identified on the current tax records of James City County, Virginia as Parcel No. 2430100024 and is said to contain 18.860 acres.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY
This document was admitted to record on 2 May 2011
at 2:51 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

BY: Betsy B. Woolridge Clerk



OFFICIAL RECEIPT
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT
DEED RECEIPT

DATE: 05/02/11 TIME: 14:51:40 ACCOUNT: 830CLR110009765 RECEIPT: 11000015110
CASHIER: CHB REG: WD45 TYPE: AMEND PAYMENT: FULL PAYMENT
INSTRUMENT : 110009765 BOOK: PAGE: RECORDED: 05/02/11 AT 14:51
GRANTOR: WILLIAMSBURG POTTERY PROPERTIES LLC EX: N LOC: CO
GRANTEE: JAMES CITY COUNTY VIRGINIA EX: N PCT: 100%

AND ADDRESS :
RECEIVED OF : JAMES CITY COUNTY DATE OF DEED: 01/28/11
CHECK: \$16.00
DESCRIPTION 1: 18.78 AC THE MALONEY FAMILY TRUST PAGES: 10 OF 0
2: NAMES: 0
CONSIDERATION: .00 A/VAL: .00 MAP:
PIN:
301 DEEDS 14.50 145 VSLF 1.50

TENDERED : 16.00
AMOUNT PAID: 16.00
CHANGE AMT : .00

CLERK OF COURT: BETSY B. WOOLRIDGE

PAYOR'S COPY
RECEIPT COPY 1 OF 2