

PROFFERS

THESE PROFFERS are made this ~~31st~~ day of August, 2006 by HILL PLEASANT FARM, INC., a Virginia corporation (together with its successors and assigns, the "Owner") and DOUG HARBIN ("Buyer").

RECITALS

A. Owner is the owner of a tract or parcel of land located in James City County, Virginia, with an address of 7152 Richmond Road, Williamsburg, Virginia and being Tax Parcel 2410100005. Buyer has contracted to purchase, conditioned upon rezoning, a portion of the parcel containing 4.7± acres, being more particularly described on Exhibit A attached hereto (the "Property"). The Property is now zoned A-1.

B. Owner and Buyer have applied to rezone the Property from A-1 to B-1, General Business District, with proffers.

C. Buyer has submitted to the County a master plan entitled "Rezoning and Special Use Permit for Doug Harbin" prepared by AES Consulting Engineers dated May 26, 2006, revised July 21, 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 B-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.

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.

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, equipping the automatic car wash with an approved water recycling system, 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. **Architectural Review.** (a) Owner has submitted to the County a conceptual architectural perspective of the car wash to be located on the Property dated June 27, 2006 (the "Perspective") together with Architectural Guidelines for the entire Property (the "Guidelines") prepared by PMA Planners + Architects. The architecture and colors of the car wash shall be generally consistent with the Perspective as determined by the Director of Planning. All buildings on the Property, including the car wash, shall be of a harmonious and uniform architectural design and color scheme

consistent with the car wash and shall be consistent with the Guidelines. No building on the property shall exceed thirty-five (35) in height.

(b) Prior to the County being obligated to issue a building permit for each building on the Property, Owner shall submit to the Director of Planning conceptual architectural plans, including architectural elevations, for the building 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.

4. **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 each 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, open space areas, private streets, sidewalks, sewer and water systems and all other common areas under the jurisdiction of the Association, 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 each Association the power to file liens on members' properties for the cost of remedying violations of, or otherwise enforcing, the Governing

Documents. The Association shall be responsible for the maintenance of (i) the private sewer system serving the Property pursuant to a Perpetual Maintenance Agreement to be entered into with James City Service Authority and (ii) any private water lines.

5. Entrances/Turn Lanes. (a) The main entrance to the Property shall be from Route 60 in the approximate location shown on the Master Plan. A right turn lane with 150 feet of storage shall be constructed at the main entrance.

(b) Owner shall install a second right in only entrance to the Property from Route 60 in the approximate location shown on the Master Plan. If and when this second entrance is installed, a right turn lane with 150 feet of storage and a 150 foot taper from Route 60 into the second entrance shall be constructed.

(c) The turn lanes proffered hereby shown on the Master Plan shall be constructed in accordance with Virginia Department of Transportation (“VDOT”) standards, shall be approved by VDOT and the Planning Director, shall include shoulder bike lanes and shall be completed or their completion bonded in form satisfactory to the County Attorney prior to the issuance of any building permit for buildings on the Property.

(d) Prior to the issuance of the first building permit for construction on the Property, Owner shall post a bond or other surety in form acceptable to the County Attorney for the installation of a traffic signal at the main entrance when and if VDOT traffic signal warrants are met. Owner shall conduct a traffic signal warrant study (i) within six months of the buildout of the Property or (ii) at such earlier time upon the request of VDOT and submit the study to the County and VDOT for their review and approval. If the approved study determines such a signal is warranted, the Owner shall

install the signal. If the approved study determines such a signal is not warranted, Owner shall have no further obligation with respect to the signal and its bond or surety shall be released by the County.

(e) If any use is proposed to locate on the Property with a materially higher trip generation based on ITE trip generation figures than the use used in the Traffic Study which results in an overall materially higher trip generation from the Property as determined by the Director of Planning, then Owner shall submit with the proposed site plan for the new use an updated traffic impact study to the Director of Planning and VDOT based on the new proposed use for their review and approval and shall implement the recommendations of the approved updated study prior to issuance of certificate of occupancy for the new use.

6. Lighting. All light poles on the Property shall not exceed 20 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.

7. Route 60 Buffer. There shall be a 50 foot community character corridor buffer along the Route 60 frontage of the Property. The portion of the buffer located adjacent to buildings, parking and the BMP shown on the Master Plan shall contain enhanced (defined as 125% of Ordinance size requirements) landscaping and variable height berms from two to four feet in height generally as shown on the Master Plan. The

western most portion of the buffer area and the adjacent open space shall have installed the fruit tree orchard and naturalized meadow generally as shown on the Master Plan. A 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 prior to the County being obligated to issue certificates of occupancy for buildings located on the Property.

8. Environmental. Owner shall submit to the County a master stormwater management plan as a part of the site plan submittal for the Property, including stormwater management/best management practices, in accordance with James City County Stormwater Guidelines and in locations as generally shown on the Master Plan and low impact design measures to satisfy the Special Stormwater Criteria, located generally as shown on the Master Plan including, without limitation, use of flatter site grades, bioretention, flat bottom, wide swales, underground pipe storm drain pipe or drywell or rain barrels for major downspouts, in accordance with the Yarmouth Creek Watershed Management Plan, for review and approval by the Environmental Division. 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. Owner shall be responsible for keeping the culverts under Route 60 draining the Property free of debris

that would block or impede drainage from the Property.

9. Excluded Uses. The following uses generally permitted in the B-1 district shall not be permitted on the Property:

- Adult Day Care Centers
- Bowling Alley
- Child Care Centers
- Dance Hall
- Fast Food Restaurants
- Funeral Homes
- Hotels, Motels, and Convention Centers
- Houses of Worship
- Indoor Theatres
- Public Meeting Hall
- Radio and Television Stations
- Schools
- Wireless Communication Facilities

10. Reserved Right of Way. Owner shall reserve the area shown on the Master Plan as “Possible Future Connection to Adjacent Parcel” for a possible future road connection to the adjacent Go Karts Plus parcel to the east of the Property.

Witness the following signatures.

HILL PLEASANT FARMS, INC.

By: _____
Title: _____



Doug Harbin

STATE OF VIRGINIA
CITY/COUNTY OF _____

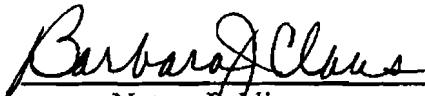
The foregoing instrument was acknowledged before me this ___ day of June,
2006, by _____ as _____ of Hill Pleasant
Farms, Inc. on behalf of the corporation.

Notary Public

My commission expires:

STATE OF VIRGINIA
CITY/COUNTY OF Williamsburg

The foregoing instrument was acknowledged before me this 5 day of ~~June~~, September
2006, by Doug Harbin.



Notary Public

My commission expires: 1/31/07

Exhibit A
Property Description