

Z-17-89
Jack L. Massie Contractor, Inc.
(SUP-3397)

BOOK 0687 PAGE 0105

PROFFER AGREEMENT

08224

These Proffers are made as of the 11th day of May, 1994, by JACK L. MASSIE CONTRACTOR, INC., a Virginia Corporation, MASSIE CORPORATION, a Virginia Corporation and SLEEPY HOLLOW CORPORATION OF TOANO, a Virginia Corporation (collectively "the Owner" or "the Owners"), together with their respective successors and assigns, which Owners collectively own certain real property shown on the James City County Tax Map 13-3 as Parcels 1-1, 1-9, 1-9B and 1-14 and on Tax Map 12-4 as a portion of Parcel 1-40.

RECITALS

A. JACK L. MASSIE CONTRACTOR, INC. is the owner of certain real property in James City County, Virginia, more particularly described as follows:

All that certain parcel of land in James City County, Virginia, containing by survey 34.48 acres, shown and described on that certain plat entitled "TOPOGRAPHIC PLAT OF 34.48 ACRES FOR JACK L. MASSIE CONTRACTOR, INC., JAMES CITY COUNTY, VIRGINIA", which plat is dated April 3, 1980, made by Evans Surveying Co., P.C., a copy of which is recorded in James City County Plat Book 41, Page 5.

Being the same property conveyed to Jack L. Massie Contractor, Inc. by Deed dated June 18, 1985 from George A. Marston, Jr.; and Dorothy M. Marston, his wife, recorded in James City County Deed Book 274, Page 158, et. seq. on June 27, 1985.

MASSIE CORPORATION is the owner of certain real property in James City County, Virginia, more particularly described as follows:

All that certain tract or parcel of land situate, lying and being in Stonehouse Magisterial District, James City County, Virginia, fronting on Cokes Lane (State Route No. 602), containing 2.2076 Acres, shown and designated as "PARCEL B, AREA = 2.2076 ACRES" on plat of survey entitled, "PLAT OF PARCELS "A" & "B", BEING A SUBDIVISION OF PROPERTY STANDING IN THE NAME OF JACK L. MASSIE CONTRACTORS, INC., STONEHOUSE DISTRICT, JAMES CITY COUNTY", dated August 25, 1987, made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, Virginia Beach and Williamsburg, Virginia, of record in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Plat Book 46, Page 59, to which plat reference is here made for a more accurate and particular description of the said property.

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Jack Massie Contractor, Inc.

Together with a non-exclusive perpetual easement for ingress and egress over and along that fifty (50) foot street leading from Cokes Lane (State Route No. 602) in a generally northwesterly direction, shown and designated as "Entrance Road" on the plat of survey hereinabove referred to.

Being the same property conveyed to Massie Corporation by Deed dated May 27, 1988 from Jack L. Massie Contractor, Inc. recorded in James City County Deed Book 392, Page 556, et. seq. on May 31, 1988.

All that certain lot, piece or parcel of land situate, lying and being in Stonehouse District, County of James City, Virginia, containing $17.257 \pm$ Acres, and designated as "PARCEL "C" $17.257 \pm$ ACRES (FORMERLY PARCEL B)", as shown on that certain plat entitled, "PLAT OF PARCELS C and D STANDING IN THE NAME OF ALACO CORPORATION (D.B. 222, PG. 413) TO BE CONVEYED TO MASSIE CORPORATION, STONEHOUSE DISTRICT, COUNTY OF JAMES CITY, VIRGINIA," dated 9/21/88 and made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, a copy of which plat is duly recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and the County of James City, Virginia, in Plat Book 49, Page 72, to which reference is here made.

Being a portion of the same property conveyed to Massie Corporation by Deed dated October 4, 1988 from Alaco Corporation recorded in James City County Deed Book 411, Page 90, et. seq., and James City County Deed Book 431, Page 503, et. seq. on October 7, 1988 and April 17, 1989, respectively.

SLEEPY HOLLOW CORPORATION OF TOANO is the owner of certain real property in

James City County, Virginia, more particularly described as follows:

All that certain tract or parcel of land situate, lying and being in Stonehouse District, James City County, Virginia, containing 12.465 Acres, more or less, designated "PARCEL "D" $12.465 \pm$ ACRES (FORMERLY PARCEL A)" as shown on that certain plat entitled, "PLAT OF PARCELS C and D STANDING IN THE NAME OF ALACO CORPORATION (D.B. 222, PG. 413) TO BE CONVEYED TO MASSIE CORPORATION, STONEHOUSE DISTRICT, COUNTY OF JAMES CITY, VIRGINIA", dated September 21, 1988, made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, a copy of which plat is duly recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia, in Plat Book 49, Page 72, to which reference is here made.

Being the same property conveyed to Sleepy Hollow Corporation of Toano by Deed dated December 14, 1990 from Massie Corporation recorded in James City County Deed Book 498, Page 614, et. seq. on December 21, 1990.

All that certain tract or parcel of land situate, lying and being in Stonehouse District, James City County, Virginia, containing 8.21 Acres, more or less, as shown on that certain plat entitled, "PLAT OF LOT LINE ADJUSTMENT, PROPERTIES OF SLEEPY HOLLOW CORPORATION OF TOANO AND NICE PROPERTIES,

INC.", dated July 27, 1990, revised October 29, 1990, made by The DeYoung-Johnson Group, Inc., Engineers, Architects, Surveyors, Williamsburg, Virginia, a copy of which plat is to be recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and County of James City, Virginia and to which plat reference is here made.

Being a portion of the same property conveyed to Sleepy Hollow Corporation of Toano by Deed of Exchange dated December 17, 1990 from Stonehouse, Inc. recorded in James City County Deed Book 498, Page 611, et. seq. on December 21, 1990.

All those two certain tracts or parcels of land situate, lying and being in Stonehouse District, James City County, Virginia, designated "PARCEL 1", containing 0.3261 Acres, and "PARCEL 2", containing 0.3232 Acres, all as shown on plat of survey entitled, "PLAT OF PROPERTY TO BE CONVEYED BY FRANK L. AND MARY KAY FERNANDEZ TO JACK L. MASSIE CONTRACTORS, INC., STONEHOUSE DISTRICT - COUNTY OF JAMES CITY, VIRGINIA", dated June 15, 1990, made by Langley and McDonald, P.C., Engineers, Planners, Surveyors, Virginia Beach and Williamsburg, Virginia, a copy of which plat of survey is recorded in the Clerk's Office of the Circuit Court for the City of Williamsburg and James City County, Virginia, in Plat Book 52, Page 96, to which plat of survey reference is here made for a more accurate and particular description of the property herein conveyed.

Being a portion of the same property conveyed to Sleepy Hollow Corporation of Toano by Deed of Exchange dated August 28, 1990 with Delmarva Properties, Inc. and Stonehouse, Inc., recorded in James City County Deed Book 487, Page 124, et. seq. on August 30, 1990.

All of the above described properties are herein collectively referred to as "the Property".

B. The Property is more particularly shown on a plat entitled "COKES LANE REZONING LEGEND" and "MAP OF PARCELS WITH PHYSICAL FEATURES, JAMES CITY COUNTY, VIRGINIA", dated 2/8/94, prepared by Langley and McDonald, P.C., which drawing is hereinafter referred to as "the Rezoning Legend".

C. The Owners have applied for a rezoning of the Property. The rezonings requested include the following:

- 20.6750 Acres, more or less, from General Agricultural District, A-1 and Limited Residential District, R-1 to General Agricultural District, A-1 with Proffers and Limited Residential District, R-1 with Proffers ("the A-1/R-1 Property").

- 20.3860 Acres, more or less, from General Agricultural District, A-1 with Special Use Permits (SUP 14-85, 4-89 & 14-90) to General Industrial District, M-2 with Proffers ("the M-2 Property").
- 31.9997 Acres, more or less, from the General Agricultural District, A-1 with Special Use Permits (SUP 14-85, 4-89 & 14-90) to Limited Business/Industrial District, M-1 with Proffers ("the M-1 Property").

D. The County's Comprehensive Plan Land Use Map specifically designates the A-1/R-1 Property as "Low Density Residential", the M-2 Property as "General Industry" and the M-1 Property as "Mixed Use".

E. The provisions of the James City County Zoning Ordinance may be deemed inadequate for the orderly development of the Property.

F. The Owners desire to offer to the County certain proffers on the development of the Property not generally applicable to land similarly zoned for the protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

NOW, THEREFORE, for and in consideration of the approval by James City County ("the County") of the rezonings set forth above, and pursuant to §15.1-491.1, et. seq., of the Code of Virginia, 1950, as amended, and §20-16 of the County Code, the Owners agree that they will meet and comply with all of the following proffers in developing the Property. In the event all of the requested rezonings are not granted by the County, these Proffers shall thereupon become null and void.

PROFFERS - THE A-1/R-1 PROPERTY

Uses:

The uses of the A-1/R-1 Property shall be limited to:

- Preserves and conservation areas for protection of natural features and wildlife.
- Water impoundments, new or expansion of, less than 20 acres and with dam heights of less than 15 feet, which impoundments shall be used for

stormwater management facilities for the A-1/R-1 Property, the M-2 Property and the M-1 Property.

- Extensions or private connections to utilities which are intended to serve existing or future customers and which are accessory to existing or proposed development.
- Open space as defined by the County's Zoning Ordinance required for the development of the portion of the Property south of the CSX railroad.
- The Owner shall use its best efforts to limit the clearing of the A-1/R-1 Property to maximize to the extent reasonably practicable its effectiveness as a visual screen between the developed portion of the Mirror Lakes subdivision and the M-2 Property. Accordingly, the Owner shall submit all of its clearing plans of the A-1/R-1 Property to the Development Review Committee of the County's Planning Commission for its review and approval.

PROFFERS - THE M-2 PROPERTY

1. Uses:

The following uses otherwise permitted under the County Zoning Ordinance on the M-2 Property shall be prohibited pursuant to these proffers:

- Boiler shops.
- Breweries and other necessary associated activities.
- Drop-forge industries, manufacturing forgings with a power hammer.
- Manufacture and processing of acrylic and other synthetic fibers.
- Manufacture and sale of manufactured homes, mobile homes, modular homes, and industrialized housing units.
- Manufacture of batteries.
- Manufacture of boats, marine equipment and boat trailers.
- Manufacture of cans and other metal products from previously processed metals.
- Manufacture of furniture.
- Manufacture of glass and glass products.
- Metal foundry and heavy weight casting.
- Drop hammers.
- Wood preserving operations.

2. Landscaping:

In conjunction with the development of the M-2 Property, the Owner(s) of the M-2 Property shall maintain a buffer of evergreen plant material consisting of Leyland Cypress or other buffering material as may be approved by the County Planning Director, placed between the railroad spur line and its mainline extending from the northeastern corner of the M-2 Property to the west approximately 315' until it

intersects the clear zone required for the crossover spur to the mainline. The plants shall be planted in 2 parallel rows each of which rows shall be approximately 4.5 feet apart. The plants in each row shall be staggered from the other row and be planted on approximately 12.5 foot centers.

3. Industrial Access Road:

The road providing direct access from U.S. Route 60 to the M-1 Property and the M-2 Property shall be constructed and dedicated to public use by the Owner(s) of the M-1 Property and the M-2 Property, all in accordance with the standards published by the Virginia Department of Transportation for similar industrial access roads. This road shall be approximately 1300' to 1500' in length and be constructed within a right of way not less than 50' in width with not less than 24' of paved surface. The road improvements shall also include moving the existing median break on U.S. Route 60 approximately 50 feet west to meet the access road and installing an eastbound left turn storage lane and taper and a westbound right turn storage lane and taper on U.S. Route 60. The length of all storage lanes and tapers shall be determined by the Virginia Department of Transportation.

The industrial access road, water service lines and sewer lines and/or force mains may be constructed in phases in accordance with approved plans of development. Upon completion of each phase, said roads and utility lines will be dedicated to the Virginia Department of Transportation or the James City Service Authority, as appropriate.

4. Ready-Mix Concrete Plant:

Prior to the issuance of a certificate of occupancy for the ready-mix concrete plant, the Owner(s) of the M-2 Property shall meet and satisfy all of the following conditions:

- a Spill Prevention and Control and Counter Measure Plan shall be approved by the Director of Code Compliance;
- all roads and parking areas shown as paved on the Rezoning Legend shall be paved;
- a dust collection system shall be provided equivalent or better in design and function to the C & W Manufacturing and Sales Company, Inc. Model No. CW-RA-140 portable dust collection system; and
- a facility shall be provided to control runoff from the wash area, cement loading area and waste storage area of the ready-mix concrete plant designed for a 25-year storm event of a 24-hour duration. This facility shall contain one additional foot of freeboard capacity in addition to the volume necessary for control of stormwater runoff.

5. Traffic signal(s) - U.S. Route 60:

The Owner shall, at its expense, commission a traffic study for the intersections of Cokes Lane with U.S. Route 60 and the Industrial Access Road with U.S. Route 60 prior to the issuance of a Certificate of Occupancy for any building which would exceed 200,000 square feet of building area on the M-1 Property and on the M-2 Property. Building area shall include all existing and new buildings, but not include the ready-mix concrete plant and the cement treated aggregate facility. The traffic study shall address the requirement, if any, of a traffic signal at either or both of said intersections based on the traffic generated by the Property at the point of study and at the full buildout stage of the Property, the then existing background traffic on U.S. Route 60 and safety considerations. After the review and approval of the traffic study by both the County and the Virginia Department of Transportation, the Owner shall pay for the cost of the purchase and installation of a traffic signal at either or both of said intersections if such signal(s) is(are) required as determined by the traffic study.

PROFFERS - THE M-1 PROPERTY

1. Uses:

The following uses otherwise permitted under the County Zoning Ordinance on the M-1 Property shall be prohibited pursuant to these proffers:

- Automobile sales
- Barber and beauty shops.
- Book stores.
- Candy stores.
- Carpet stores.
- Department stores.
- Dressmaking stores.
- Drugstores.
- Dry cleaners.
- Employment services or agencies.
- Farmer's markets.
- Feed, seed, and farm supply stores.
- Florist stores.
- Furniture stores.
- Furrier stores.
- Greeting card stores.
- Home appliance sales and service.
- Hotels, motels or convention centers with accessory retail sales, barber shops and beauty shops located within the hotel, motel or convention center for the principal benefit of the resident guest.
- Ice cream stores.
- Indoor sport facilities, health clubs, exercise clubs, and fitness centers.
- Jewelry sales and service.

- Locksmith and gunsmith shops excluding shooting ranges.
- Manufacture and assembly of musical instruments, toys, novelties, and rubber and metal stamps.
- Manufactured home or mobile home sales.
- Music and record stores.
- Non-emergency medical transport.
- Pet stores.
- Picture framing stores.
- Places of worship.
- Plant and garden supply and hardware and paint stores.
- Post Offices.
- Tearooms and taverns.
- Retail food stores, bakeries and fish markets.
- Security service offices.
- Shoe stores.
- Sporting goods stores.
- Stamp and coin stores.
- Tailor shops.
- Tobacco and pipe stores.
- Toy stores.
- Travel bureaus.
- Veterinary hospitals and kennels.
- Wearing apparel stores.
- Yard goods stores.

2. Certain Permitted Uses with Additional Restrictions:

The signage for the following generally permitted uses shall not be visible from either U.S. Route 60 or Cokes Lane; the buildings for said uses shall neither face U.S. Route 60 or Cokes Lane nor be used by persons other than Owners, operators, employees, customers and subcontractors of the other generally permitted uses on the Property:

- Automobile service with major repair (limited to a fully enclosed building).
- Automobile service stations with or without the sale of fuel.
- Restaurants.
- Tire, transmission, glass, body and fender and other automotive product sales and service with major repair (limited to a fully enclosed building) and vehicle storage screened from adjacent property by landscaping and fencing.
- Vehicle and trailer sales and service, with major repair (limited to a fully enclosed building).

3. Landscaped Earthen Berms:

The Owner(s) of the M-1 Property shall maintain each of the following existing landscaped earthen berms on the M-1 Property:

- the 8' high landscaped berm located 20' from the southeastern corner of the M-1 Property adjacent to and paralleling the eastern boundary of the M-1 Property being approximately 350' in length; and
- the 10' high landscaped berm located adjacent to and paralleling the southern border of the M-1 Property (adjacent to property of Van Driem) being approximately 410' in length.

4. Additional Landscaping:

In conjunction with the development of the M-1 Property, the Owner(s) of the M-1 Property shall plant (or maintain in the case of existing landscaping) as necessary a buffer of evergreen plant material consisting of Leyland Cypress or other buffering material as may be approved by the County Planning Director. The plants shall be planted in 2 parallel rows each of which rows shall be approximately 4.5 feet apart. The plants in each row shall be staggered from the other row and be planted on approximately 12.5 foot centers at the following locations:

- along that portion of the southern and eastern boundaries of the M-1 Property abutting the Wallace property;
- along that portion of the western boundary of the M-1 Property abutting the Bell property;
- along that portion of the southern boundary of the M-1 Property abutting the Van Driem property, excluding that portion of said boundary along which is currently constructed a 10' landscaped earthen berm;
- along that portion of the southern boundary of the M-1 Property abutting the Taylor Estate property, excluding that portion of said boundary for which planting has previously been accomplished in conjunction with previously approved site plans; and
- along that portion of the northern boundary of the M-1 Property between the CSX railroad and the spur line on the M-1 Property.

5. Building and Site Lighting Arrangement:

In order to mitigate possible noise, light and dust impacts to adjacent property, the Owner(s) of the M-1 Property shall arrange all buildings, doors, points of access for shipping and receiving and site lighting (for all structures for which site plan approval has not been previously granted by the County) as follows:

- the front of buildings will face away from adjacent properties which are not zoned Industrial; and
- doors and points of access for shipping and receiving and site lighting shall be reviewed and approved by the Development Review Committee so as to minimize adverse impacts on adjoining properties which are not zoned Industrial; however, access to the approved railroad spurs and the meeting of all code requirements shall not be limited by this provision.

6. Industrial Access Road:

The road providing direct access from U.S. Route 60 to the M-1 Property and the M-2 Property shall be constructed and dedicated to public use by the Owner(s) of the M-1 Property and the M-2 Property, all in accordance with the standards published by the Virginia Department of Transportation for similar industrial access roads. This road shall be approximately 1300' to 1500' in length and be constructed within a right of way not less than 50' in width with not less than 24' of paved surface. The road improvements shall also include moving the existing median break on U.S. Route 60 approximately 50 feet west to meet the access road and installing an eastbound left turn storage lane and taper and a westbound right turn storage lane and taper on U.S. Route 60. The length of all storage lanes and tapers shall be determined by the Virginia Department of Transportation.

The industrial access road, water service lines and sewer lines and/or force mains may be constructed in phases in accordance with approved plans of development. Upon completion of each phase, said roads and utility lines will be dedicated to the Virginia Department of Transportation or the James City Service Authority, as appropriate.

7. Traffic signal(s) - U.S. Route 60:

The Owner shall, at its expense, commission a traffic study for the intersections of Cokes Lane with U.S. Route 60 and the Industrial Access Road with U.S. Route 60 prior to the issuance of a Certificate of Occupancy for any building which would exceed 200,000 square feet of building area on the M-1 Property and on the M-2 Property. Building area shall include all existing and new buildings, but not include the ready-mix concrete plant and the cement treated aggregate facility. The traffic study shall address the requirement, if any, of a traffic signal at either or both of said intersections based on the traffic generated by the Property at the point of study and at the full buildout stage of the Property, the then existing background traffic on U.S. Route 60 and safety considerations. After the review and approval of the traffic study by both the County and the Virginia Department of Transportation, the Owner shall pay for the cost of the purchase and installation of a traffic signal at either or both of said intersections if such signal(s) is(are) required as determined by the traffic study.

8. Landscaping of Buffer Along U.S. Route 60 (Richmond Road):

The Owner(s) of the M-1 Property shall submit for review and approval to the Development Review Committee of the County's Planning Commission a plan for an enhanced evergreen landscaping with berms and/or moguls along the U.S. Route 60 (Richmond Road) frontage of the M-1 Property to a depth of 50 feet. Except for the Industrial Access Road shown on the Rezoning Legend, no other roads or driveways shall cross this buffer area. The existing billboard within the buffer shall be removed within 62 months from the date hereof.

GENERAL PROFFERS

1. Headings:

All section and subsection headings of this Agreement are for convenience only and are not part of these proffers.

2. Rezoning Legend:

The Property will be developed in accordance with the Rezoning Legend. The Owner(s) may from time to time, in final subdivision plats or site plans submitted to the County, relocate the specific uses shown on the Rezoning Legend (provided that such uses are permitted by the County's Zoning Ordinance and these proffers) provided that the Planning Commission determines that said relocations do not alter the basic concept or character of the development.

3. Phasing of Additional Landscaping:

The additional landscaping required pursuant to this Agreement may be installed in phases in accordance with approved site plans.

4. Conflict with Vested Rights:

These Proffers are subject and inferior to the Owner's vested rights pursuant to site plans previously approved by the County. Any conflict between the terms of these Proffers and the Owner's vested rights shall be resolved in accordance with the Owner's vested rights.

5. Severability of Provisions:

If any clause, sentence, paragraph, section or subsection of these Proffers shall be adjudged by any Court of competent jurisdiction to be invalid for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth or of the United States, or if the application thereof to the Owner or to any government agency or circumstance is held invalid, such judgment or holding shall be confined in its operation to the clause, sentence, paragraph, section or subsection hereof or the specific application thereof, directly involved in the controversy in

which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, section or subsection hereof, or affect the validity of the application thereof to the Owner or to any other government agency, person or circumstance.

WITNESS the following signatures and seals:

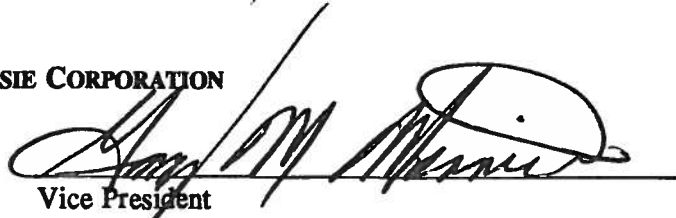
JACK L. MASSIE CONTRACTOR, INC.

By:


Vice President

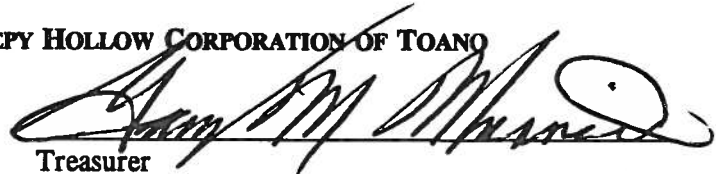
MASSIE CORPORATION

By:


Vice President

SLEEPY HOLLOW CORPORATION OF TOANO

By:


Treasurer

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 11th day of May, 1994 by GARY M. MASSIE, Vice President of JACK L. MASSIE CONTRACTOR, INC., a Virginia corporation, its officer in this behalf first duly authorized, GARY M. MASSIE, Vice President of MASSIE CORPORATION, a Virginia corporation, its officer in this behalf first duly authorized, and GARY M. MASSIE, Treasurer of SLEEPY HOLLOW CORPORATION OF TOANO, a Virginia corporation, its officer in this behalf first duly authorized.

Cheri L. Smith
NOTARY PUBLIC

My commission expires: 9-30-97



VIRGINIA: City of Williamsburg and County of James City, to Wit:

In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City the

18 day of May, 1994. This Progen was presented with certificate annexed and admitted to record at 3:48 o'clock

Teste: Helene S. Ward, Clerk
by Helene S. Ward
Deputy Clerk