

100021284

Return to: Adam R. Kinsman  
Deputy County Attorney  
James City County  
P.O. Box 8784  
Williamsburg, VA 23187-8784

Tax Map No. 5920100019

**PROFFERS**

THESE PROFFERS are made as of this 14<sup>th</sup> day of September, 2010 by John A. Rogers, II (together with his successors and assigns, the "Owner").

**RECITALS**

1. The Owner is the owner of certain real property located in James City County (the "County") at 8953 Pocahontas Trail and more particularly described as James City County Real Estate Tax Map No. 5920100019 (the "Property"). (See Exhibit "A" for Legal Description)
2. The Property is zoned M-2, General Industrial.
3. The Owner has applied for a rezoning of the Property from M-2, General Industrial to B-1, General Business with proffers.
4. The Owner desires to offer the County certain conditions on the development of the Property not generally applicable to land zoned B-1, General Business.

NOW THEREFORE, for and in consideration of the approval of the requested zoning and pursuant to section 15.2-2303 of the *Code of Virginia*, 1950, as amended, and the James City County Code, the 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 become null and void.

**CONDITIONS**

1. The Property shall be used only for the following purposes in accordance with the requirements set forth in the James City County Code: restaurant, fast food restaurant, tea room and tavern; veterinary hospital; banks and other similar financial institutions; medical clinics or offices; convenience store; tire, transmission, glass, body and fender and other automotive repair and service; vehicle rentals; and vehicle and trailer sales and services, provided, however, paint shops shall not be permitted as a part of any automotive, vehicle or trailer repair or service facility.
2. Notwithstanding the above, the Property shall not be used for any purpose that generates air emissions that contain substances that are hazardous or toxic under federal, state, or local law,

statute, regulation, or ordinance or that otherwise violate any applicable law, ordinance or regulation.

3. The building to be constructed on the Property by the Owner will be approximately 1,700 square feet, and will be located as shown on the plan by Land Tech dated June 2010.

4. The building exterior shall be brick and siding in a general color palette of brown brick, white siding and a red roof.

5. The existing pole mounted sign will be replaced with a ground mounted monument sign of thirty-two square feet or less.

6. If a restaurant, fast food restaurant or tea room and tavern is operated on the Property, no smoke, charcoal, or pit cooking, or any process using or incorporating any of the foregoing (either individually or in combination), shall be utilized in any cooking process occurring on or at the Property by or in any such use.

7. If a restaurant, fast food restaurant or tea room and tavern is operated on the Property, the building shall be equipped prior to issuance of a certificate of occupancy with an Smog-Hog PSG 12 -2 (or equivalent equipment/device from a reputable manufacturer) air cleaner/filtration system. Air emissions from such a use of the Property shall not exceed either the capacity of the foregoing system or the levels permissible under Condition # 2 above. Owner or operator of the Property shall maintain, repair, or replace the system in accordance with the manufacturer's specifications or recommendations for maintenance, repair, or replacement.

8. Prior to the issuance of a certificate of occupancy for a restaurant, fast food restaurant, tea room, tavern, or other use on the Property that generates air emissions that emanate from the Property, the owner of the Property shall record a restrictive covenant against the Property requiring that so long as the Property is used for a restaurant, fast food restaurant, tea room, tavern, or other use that generates air emissions that emanate from the Property and so long as a warehouse that stores beverage containers deemed "food containers" under the United States Food, Drug and Cosmetic Act is operated on the adjacent Tax Parcel 5920100018, the owner or operator, if different, of the Property shall maintain general liability insurance associated with the use of the Property in an amount equal to or greater than \$2,000,000.00 with a special endorsement naming the owner of Tax Parcel # 5920100018 as an additional insured for the limited purpose covering any damage to the beverage containers stored by the owner Tax Parcel # 5920100018 in the warehouse on Tax Parcel # 5920100018 as a result of air or other emissions emanating from the Property and/or the use thereof. The restrictive covenant shall be submitted to and approved by the County Attorney for consistency with this Proffer prior to issuance of a building permit. A copy of such policy of insurance shall be provided to the County and to the owner of Tax Parcel # 5920100018 prior to issuance of a certificate of occupancy for any such use on the Property, and such policy of insurance shall provide 30 days advance notice of cancellation to the owner of Tax Parcel # 5920100018.

9. These proffered conditions are not severable. Invalidation of any word, phrase, clause, sentence, or paragraph or the unenforceability of same shall invalidate this entire set of proffers and render the associated rezoning null and void.

WITNESS THE FOLLOWING SIGNATURE:

  
\_\_\_\_\_  
John A. Rogers, II

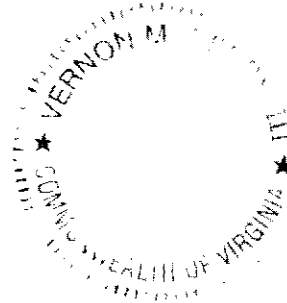
COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY of AMES CITY, to wit:

The foregoing instrument was acknowledged this 14 day of September, 2010 by John A. Rogers, II.

  
\_\_\_\_\_  
Notary Public

Notary No. 183270

My Commission Expires: 12/31/2014



DOCSWMB-#6287970-v3-Ball\_Corporation\_Oinkers\_Proffers.DOC



Exhibit "A"

All of that certain lot, piece or parcel of land situate, lying and being in Roberts Magisterial District, formerly Jamestown District, James City County, Virginia, containing approximately one acre, but sold in gross, and not by the acre, being the remainder of the land owned by Nora I. Cole at this location being formerly her residence, and situate between Ball Corporation and Badische Corporation access road on Route 60, and being all the residue of the parcel remaining of the sale of 1.42 acres to Ball Corporation by deed dated July 23, 1971, which deed had attached thereto a plat entitled "Plat of Part of the Property of Nora I. Cole, Roberts District, James City County, Virginia for Ball Corporation", dated July 19, 1971, made by Baldwin and Gregg, Engineers, Surveyors, Planners, which said plat is recorded in Plat Book 28, page 59, to which plat reference is here made for a more complete description of the property hereby conveyed said property being the residue lying between the conveyance to Ball Corporation and to the North thereof and bounded on the North by U. S. Route 60.

VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
This document was admitted to record on 16 OCT 2010  
at 9:01 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

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OFFICIAL RECEIPT  
WILLIAMSBURG/JAMES CITY COUNTY CIRCUIT  
DEED RECEIPT

DATE: 10/06/10 TIME: 09:01:00 ACCOUNT: 830CLR100021284 RECEIPT: 10000032736  
CASHIER: CHB REG: WD45 TYPE: OTHER PAYMENT: FULL PAYMENT  
INSTRUMENT : 100021284 BOOK: PAGE: RECORDED: 10/06/10 AT 09:01  
GRANTOR: ROGERS, JOHN A; II EX: N LOC: CO  
GRANTEE: JAMES CITY COUNTY EX: N PCT: 100%  
AND ADDRESS :  
RECEIVED OF : JCCO DATE OF DEED: 09/14/10  
CHECK: \$16.00  
DESCRIPTION 1: ONE AC NORA I COLE PAGES: 4 O/P 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