

**050010043**

**JAMES RIVER COMMERCE CENTER  
AMENDED PROFFER AGREEMENT**

This Agreement made this 4<sup>th</sup> day of March, 2005, by and between WILLIAMSBURG DEVELOPMENTS, INC., a Virginia Corporation, the ECONOMIC DEVELOPMENT AUTHORITY OF JAMES CITY COUNTY, VIRGINIA, previously known as the Industrial Development Authority of James City County, Virginia, a political entity of the Commonwealth of Virginia, DYARRCC, INC., a Virginia Corporation, LIBERTY PROPERTY DEVELOPMENT, LLC, a Virginia Limited Liability Corporation, JEANNE REED'S, LTD, a Virginia Corporation, HALLMARK ENTERPRISE, LLC, a Virginia Limited Liability Corporation, MONTROSE, LLC, a Virginia Limited Liability Corporation, and JAMES RIVER COMMERCE CENTER ASSOCIATION, INC., a Virginia Corporation, ("the Owners"), and the County of James City, Virginia, a political subdivision of the Commonwealth of Virginia ("the County").

Whereas, each of the Owners owns a separate tract of land situated in James City County, Virginia, the combination of which tracts is known as the James River Commerce Center, containing 208.14 acres, more or less, and lying adjacent to and on the southerly side of U.S. Route 60 East, Pocahontas Trail, more particularly described on Exhibits A, and B attached, but less and except the property described on Exhibit C (collectively "the Property"); and

Whereas, the Owners have applied for a rezoning of the Property from the Limited Business/Industrial District, M-1 with proffers ("the Existing Zoning") to the Limited Business/Industrial District, M-1 with amended proffers ("the Proposed Zoning"); and

Whereas, the provisions of the County's Zoning Ordinance have changed since the time of the first proffers and the existing proffers may be deemed inadequate for the orderly development of the Property; and

Whereas, the Owners are desirous of offering certain conditions for the protection of the community that are not generally applicable to land similarly zoned in addition to the regulations provided for in the Proposed Zoning regulations for protection and enhancement of the community and to provide for the high quality and orderly development of the Property.

**NOW, THEREFORE,** this Agreement witnesseth that for and in consideration of the County rezoning the Property from the Existing Zoning to the Proposed Zoning and pursuant to Section 15.2-2296 et. seq. of the Code of Virginia, 1950, as amended, and Section 24-16 of the Zoning Ordinance of the County, the Owners agree that in addition to the regulations provided in the Proposed Zoning, they and each of them will meet and comply with all of the following conditions in the development of the Property. In the event the requested rezoning is not granted by the County, these proffers shall thereupon become null and void.

1. **Limitations on Use.** Without the amendment of this Agreement (as to uses otherwise generally permitted by the County's Zoning Ordinance) or the issuance of the applicable special use permit (as to uses only specially permitted by the County's Zoning Ordinance) the Property shall only be used for one or more of the following generally permitted uses provided, however, that the combination of floor area of (1) business, professional and governmental offices and (2) research and development offices which is not accessory to other permitted uses shall be limited to a total of 264,000 square feet.

Accessory uses as defined in Section 24-2 of the County's Zoning Ordinance.

Apartment or living quarters for a guard, caretaker or other person employed on the premises which is clearly secondary to the business or industrial use of the property.

Banks and other similar financial institutions.

Barber and beauty shops.

Book stores.

Business, professional, and governmental offices.

Contractor offices, equipment storage yards, shops and warehouses with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Courier services.

Data processing centers.

Employment services or agencies.

Fire stations.

Heavy equipment sales and service, with major repair (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Indoor sports facilities, health clubs, exercise clubs and fitness centers.

***Industrial dry cleaner and laundry.***

Industrial and technical training schools.

Janitorial service establishments.

Laser technology production.

Lumber and building supply wholesale stores with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Machinery sales and service with major repair (limited to a fully enclosed building).

Manufacture and assembly of musical instruments, toys, novelties, and rubber and metal stamps.

Manufacture and bottling of soft drinks and wine.

Manufacture and processing of textiles and textile products.

***Manufacture and storage of ice, including dry ice.***

***Manufacture, assembly, or fabrication of sheet metal products.***

Manufacture, compounding, assembly or treatment of products made from previously prepared paper, plastic, metal, textiles, tobacco, wood, paint, fiber glass, glass, rubber, leather, cellophane, canvas, felt, fur, horn, wax, hair, yarn **and stone.**

Manufacture, compounding, processing or packaging of cosmetic, toiletry, and pharmaceutical products.

Manufacture of carpets and carpet yarns.

***Manufacture of furniture.***

Manufacture of pottery and ceramic products using kilns fired only by gas or electricity.

Manufacture or assembly of appliances, tools, firearms, hardware products, and heating, cooling or ventilating equipment.

Manufacture or assembly of electronic instruments, electronic devices or electronic components.

Manufacture or assembly of medical, drafting, metering, marine, photographic and mechanical instruments.

Marine or waterfront businesses to include receipt, storage and transshipment of waterborne commerce, or seafood receiving, packing and distribution.

***Micro-breweries.***

Non-emergency medical transport.

Nurseries (wholesale only).

Off-street parking as required by Section 20-53 of the County's Zoning Ordinance.

Plant, garden supply, hardware and paint wholesale stores.

Plumbing and electrical supply wholesale stores with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Post offices.

Printing, lithographing, engraving, photocopying, blueprinting and publishing establishments.

Radio and television stations, and accessory antenna or towers, self-supported (not attached to buildings) which are sixty feet or less in height.

Research, development, and design facilities.

Restaurants, tea rooms and taverns.

Security service offices.

Telephone exchanges and telephone switching stations.

Travel bureaus.

Warehouse, storage, and distribution centers with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

Welding and machine shops with storage (limited to a fully enclosed building) or screened with landscaping and fencing from adjacent property.

2. **Initial Road Improvements.** Access to the Property shall be limited to one entrance on U.S. Route 60 opposite Tarleton Bivouac. Additional commercial entrances to the Property shall be allowed but only with the prior review and approval of both the County's Director of Planning and the Virginia Department of Transportation ("VDOT"). Prior to issuance of the Certificate of Occupancy on the Property, the Williamsburg Development, Inc., and the Economic Development Authority of James City County, Virginia will make the following road improvements:

The installation of: (1) the main entrance to the Property from U.S. Route 60 the right-of-way for which main entrance shall be approximately 300 feet in depth tapering back to a two-lane right-of-way and which main entrance shall incorporate a three-lane roadway (one entering and two exiting) with right-of-way of sufficient width to accommodate a third exiting lane; (2) a right turn lane on the eastbound U.S. Route 60 approach; (3) a left turn lane on the eastbound U.S. Route 60 approach; (4) a left turn lane on the westbound U.S. Route 60 approach; and (5) separate left and right turn lanes exiting the Property.

3. **Traffic Light Improvements.** Upon meeting applicable VDOT warrants, the Williamsburg Development, Inc., and the Economic Development Authority of James City County, Virginia shall signalize, in a manner acceptable to VDOT, the intersection of the entrance roadway to the Property with U.S. Route 60.

4. **Subsequent Road Improvements.** Except as hereinafter provided, development on the Property shall be limited to no more than 708,000 square feet of interior building area until the following road improvements are in place.

- a. Widening of U.S. Route 60 from the existing two-lane facility to a four-lane divided (urban minor) arterial roadway along the entire frontage of the Property from the James River Elementary School property to the Ball Metal property; and
- b. Installation of a second northbound left turn lane onto U.S. Route 60 within the main entrance to the Property.

Notwithstanding the above limitation, the Williamsburg Development, Inc., and the Economic Development Authority of James City County, Virginia may conduct a traffic analysis either (1) when VDOT includes for construction in its Six Year Plan alternate U.S. Route 60 East as generally shown on the County's Comprehensive Plan or (2) when development on the Property reaches or exceeds 300,000 square feet of interior building area. The Williamsburg Development, Inc., and the Economic Development Authority of James City County, Virginia shall submit the traffic analysis to the Director of Planning for approval. If the approved results of that analysis indicate that additional development above 708,000 square feet of interior building area can be accommodated with only the initial road improvements specified in paragraph 2 above, the Director of Planning may allow such additional development prior to the installation of the improvements specified in subparagraphs a and b above.

5. **Setback from U.S. Route 60 East.** No building (or parking lot) shall be located within 140 feet of the centerline of the right-of-way of U.S. Route 60 East, existing at the time of approval of the rezoning of the Property.
6. **Owner's Association.** The Owners have provided documentation acceptable to the County Attorney demonstrating that an owners' association has been legally established with authority to impose, raise, and collect assessments against the owners of lots according to law. The association has the ability to place a lien on any lot within the Property for unpaid assessments levied against that lot.
7. **Limitations on Land Disturbing Activities.** No land disturbing activities with the exception of stormwater facilities or other utilities approved by the Development Review Committee, and archaeological research, shall take place in any area shown as "Undevelopable Land" on the plats entitled "Subdivision of Property of Colonial Williamsburg Foundation, Being Part of the Locust Grove Tract, Situated in the Roberts District, James City County, Virginia", dated 8/7/91, recorded in James City County Plat Book 55, Page 43 and "Subdivision of Property of Colonial Williamsburg Foundation, Being Part of the Conveyance to Williamsburg Developments, Inc. Situated in the Roberts District, James City County, Virginia" dated April 27, 1992 recorded in James City County Plat Book 56, Pages 32-33.
8. **Conflict with Declaration of Covenants and Restrictions.** If any one or more of these proffers or any portion thereof be in conflict with any one or more of the conditions contained in the Declaration of Covenants and Restrictions recorded in James City County Deed Book 545, Page 361, et. seq., the



Supplemental Declaration thereto recorded in James City County Deed Book 583, Page 676, et. seq. or any amendment to either or both of said declarations, the more restrictive provision(s) shall govern.

9. **Contract Not Amended.** Nothing in this Agreement shall be deemed to change any provision of the Agreement dated December 1, 1991 between the City of Williamsburg, Virginia, the County of James City, Virginia, The Colonial Williamsburg Foundation and Williamsburg Developments, Inc. and the limitations on the financial responsibilities of the parties thereto.
10. **No Relationship Created.** Nothing in the execution and delivery of this Proffer Agreement is intended to create a joint venture, partnership, agency, or other legal combination among and/or between any or all of the Owners.
11. **Binding Upon Successors.** The obligations created by this Agreement shall be binding upon each of the successors in title to each of Williamsburg Developments, Inc., and the Economic Development Authority of James City County, Virginia.
12. **Headings.** All section and subsection headings of this Agreement are for convenience only and are not part of these proffers.
13. **Prior Proffers Void.** Upon the approval of the requested rezoning, all prior proffers on the Property in favor of the County shall become null and void.
14. **Severability.** 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, but not limited to, a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or of the United States of America, 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 or application thereof to the Owner or to any other government agency, person or circumstance.

WILLIAMSBURG DEVELOPMENTS, INC.

By: Victoria Gussman  
Victoria Gussman, Vice President

STATE OF VIRGINIA  
CITY/COUNTY OF Williamsburg, to-wit:

The foregoing document was acknowledged before me this 8<sup>th</sup> day of March, 2005 by Victoria Gussman, Vice President, of and acting on behalf of Williamsburg Developments, Inc.

Jo Brooks  
Notary Public

My commission expires: 11/30/08

ECONOMIC DEVELOPMENT AUTHORITY  
OF JAMES CITY COUNTY, VIRGINIA

By: Virginia B. Hartmann  
Virginia B. Hartmann, Chairman

STATE OF VIRGINIA  
CITY/COUNTY OF James City, to-wit:

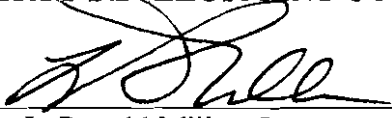
The foregoing document was acknowledged before me this 10<sup>th</sup> day of March, 2005 by Virginia B. Hartmann, Chairman, of and acting on behalf of the Economic Development Authority of James City County, Virginia.

Leui G. Ciock  
Notary Public

My commission expires: January 31, 2007



LIBERTY DEVELOPMENT CO., LLC

By:   
L. Ronald Miller, Owner

STATE OF VIRGINIA  
CITY/COUNTY OF YORK, to-wit:

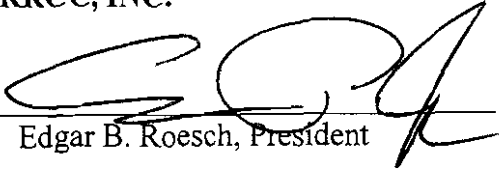
The foregoing document was acknowledged before me this 4 day of March, 2005 by L. Ronald Miller, Owner, of and acting on behalf of Liberty Development Company, LLC.

  
Notary Public

My commission expires: June 30, 2007

DYARRCC, INC.

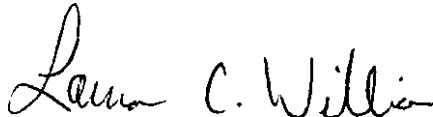
By:

  
Edgar B. Roesch, President

STATE OF VIRGINIA

CITY/COUNTY OF James City Co., to-wit:

The foregoing document was acknowledged before me this 24<sup>th</sup> day of MARCH, 2005 by Edgar B. Roesch, President of and acting on behalf of DYARRCC, Inc..

  
Notary Public

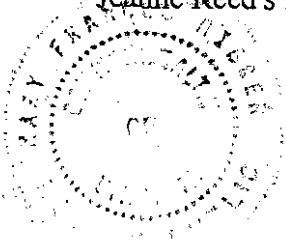
My commission expires: 8-31-08

JEANNE REED'S LTD.

By: *Robert B. Halkowich* *president*  
Robert B. Halkowich, President

STATE OF VIRGINIA  
CITY/COUNTY OF *James City*, to-wit:

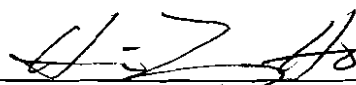
The foregoing document was acknowledged before me this *18th* day of  
*March*, 2005 by Robert B. Halkowich, President, of and acting on behalf of  
Jeanne Reed's Ltd.



*Mary Frances Rieger*  
Notary Public

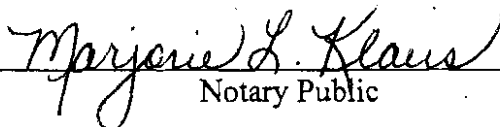
My commission expires: *October 31, 2005.*

HALLMARK ENTERPRISE, LLC

By:   
Huifang Ho, Vice President

STATE OF VIRGINIA  
CITY/COUNTY OF POQUOSON, to-wit:

The foregoing document was acknowledged before me this 9th day of March, 2005 by Huifang Ho, Vice President of and acting on behalf of Hallmark Enterprise, LLC.

  
Notary Public

My commission expires: 3-31-07



MONTROSE, LLC

By:

Alan Graham  
Alan Graham, President

STATE OF VIRGINIA

CITY/COUNTY OF Newport News, to-wit:

The foregoing document was acknowledged before me this 8<sup>th</sup> day of March, 2005 by Alan Graham, President of and acting on behalf of Montrose, LLC.

Andrea L. Starkey  
Notary Public

My commission expires:

February 29, 2008

JAMES RIVER COMMERCE CENTER ASSOCIATION

By: Victoria Gussman  
Victoria Gussman, President & Trustee

STATE OF VIRGINIA  
CITY/COUNTY OF Williamsburg to-wit:

The foregoing document was acknowledged before me this 11<sup>th</sup> day of March, 2005 by Victoria Gussman, President and Trustee of and acting on behalf of the James River Commerce Center Association.

Jo Brooks  
Notary Public

My commission expires: November 30, 2008

JAMES RIVER COMMERCE CENTER ASSOCIATION

By: Leo P. Rogers  
Leo Rogers, Vice President & Trustee

STATE OF VIRGINIA  
CITY/COUNTY OF James City, to-wit:

The foregoing document was acknowledged before me this 9<sup>th</sup> day of March, 2005 by Leo Rogers, Vice President and Trustee of and acting on behalf of the James River Commerce Center Association.

Mary Frances Reeger  
Notary Public

My commission expires: October 31, 2005

JAMES RIVER COMMERCE CENTER ASSOCIATION

By: Gail Waddell  
Gail Waddell, Secretary & Trustee

STATE OF VIRGINIA  
CITY/COUNTY OF WILLIAMSBURG, to-wit:

The foregoing document was acknowledged before me this 17<sup>th</sup> day of MARCH, 2005 by Gail Waddell, Secretary and Trustee of and acting on behalf of the James River Commerce Center Association.

Marie A. Ranieri  
Notary Public

My commission expires: October 31, 2008

## EXHIBIT "A"

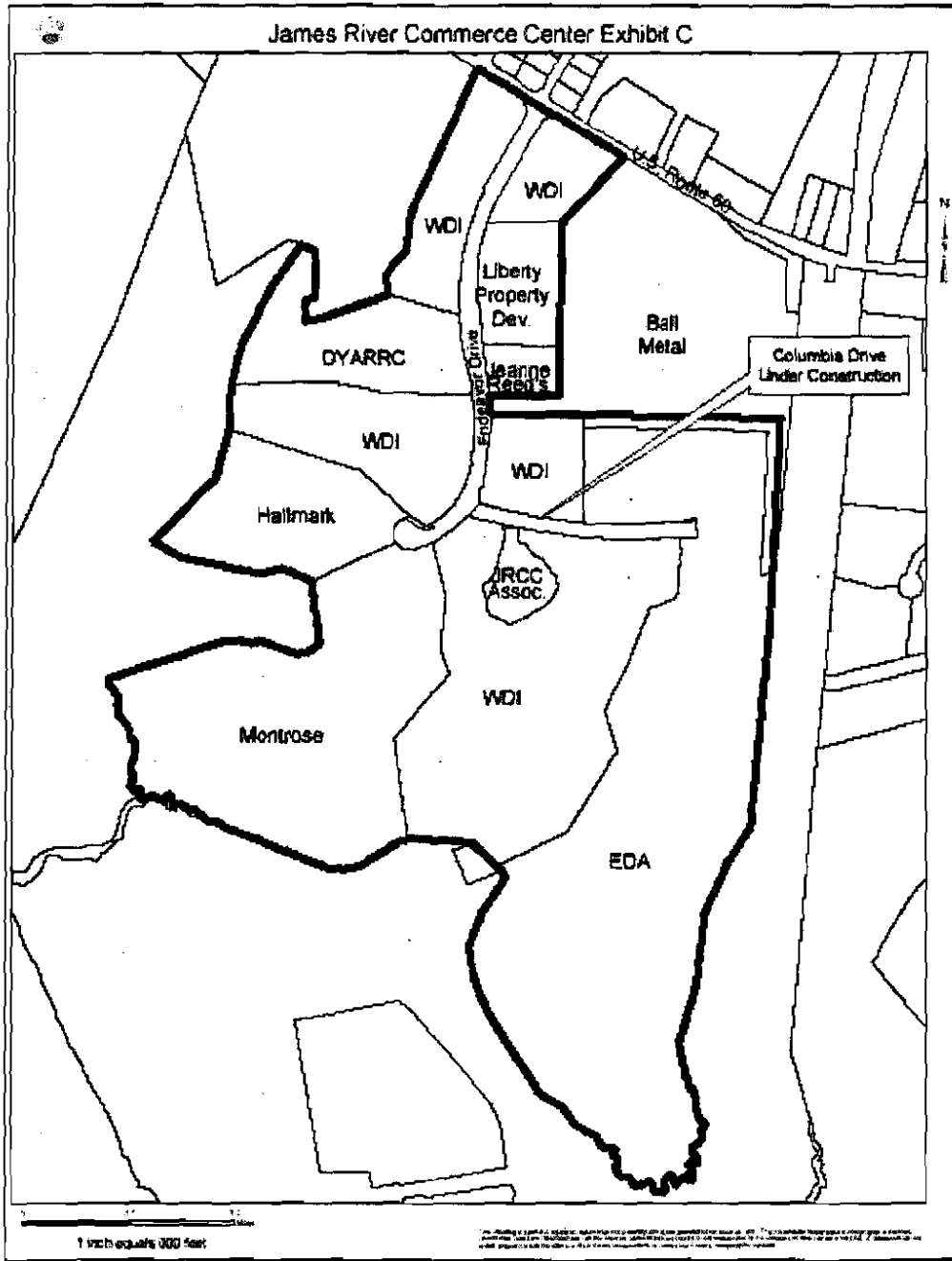
All that certain lot, piece or parcel of land, with improvements thereon and appurtenances thereunto belonging, lying and being in Roberts District, James City County, Virginia, as shown on a plat of survey prepared by Langley and McDonald, P.C., a professional corporation, Engineers-Planners-Surveyors, dated 08/07/91 entitled "SUBDIVISION OF PROPERTY OF COLONIAL WILLIAMSBURG FOUNDATION, BEING PART OF THE LOCUST GROVE TRACT, SITUATED IN THE ROBERTS DISTRICT, JAMES CITY COUNTY, VIRGINIA", on which plat the property hereby conveyed is more particularly described as "PARCEL 2, TOTAL AREA = 61.2113 ACRES, NET DEVELOPABLE AREA - 45.0000 ACRES, UNDEVELOPABLE AREA = 16.2113 ACRES" together with "ADDITIONAL AREA REQUIRED FOR SUBDIVISION APPROVAL = 3.1387 ACRES" which plat is recorded in Plat Book 55, Page 43, less and except any right of way dedicated to any State or local government.

## EXHIBIT "B"

All that certain lot, piece or parcel of land, containing 154.8946 acres, with improvements thereon, and appurtenances thereunto belonging, lying and being in James City County, Virginia, as shown on a plat of survey prepared by Langley and McDonald, P.C., dated April 27, 1992, entitled "Subdivision of Property of Colonial Williamsburg Foundation Being Part of The Locust Grove Tract to be conveyed to Williamsburg Developments, Inc. situated in the Roberts District, James City County, Virginia," which plat is recorded in Plat Book 56, Pages 32 and 33, less and except:

- 1) All that certain piece, parcel or lot of land situated in James City County, Virginia, identified as Parcel "A", containing 11.2531 acres, as shown on a certain plat entitled "SUBDIVISION OF PROPERTY OF WILLIAMSBURG DEVELOPEMNTS, INC., (D.B. 583, PG. 672), BEING PART OF THE LOCUST GROVE TRACT SITUATED IN ROBERTS DISTRICT, JAMES CITY COUNTY, VIRGINIA", dated December 6, 1996 and made by Langley and McDonald, P. C. of Virginia Beach and Williamsburg, Virginia. It being that same property as that conveyed to Ball Metal Container Corporation, a Colorado Corporation, by deed dated December 16, 1996 from Williamsburg Development, Inc., and recorded in the Clerk's Office of the Circuit Court of James City County, Virginia on Instrument No. 97000760 recorded in Plat Book 65, Page 90.
- 2) Any right of way dedicated to any State or local government.

EXHIBIT "C"



VIRGINIA: CITY OF WILLIAMSBURG & COUNTY OF JAMES CITY  
 This document was admitted to record on 9 May 05  
 at 10:51 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